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Legal Education and Curriculum Innovation:
Law and Aging as a New Field of Law

Martin Lyon Levine*

"There are few things more fascinating in our jurisprudence than the organization of what comes, almost immediately, to be perceived as a new 'field' of law."

--Grant Gilmore

How does it happen that we come to perceive the existence of a new field of law? To perceive is an act of decision that might be made in many ways. The question of recognizing a new legal field invites attention for a number of reasons. Classification, the process of grouping items, and division, the reverse process of breaking down a larger class into subgroupings, are age-old concerns of philosophy. As a matter of the organization of research, a scholar may seek criteria for treating a particular bundle of issues as an interrelated set forming a single whole, to be distinguished as a separate part of the broader discipline.

As a matter of curriculum, a faculty may seek criteria for recognizing one set of topics as a separate law course, rather than as part of a larger unit or as a topic to be scattered among other courses. As law schools recognize a new field, publish-

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2. As defined here, a "field" of study is a subdivision within a broader discipline, such as law. For criteria that might be used in recognizing a discipline, see Levine, Does Gerontology Exist?, 20 GERONTOLOGIST -- (1980).
4. Curriculum classification is a mundane cousin of the great philosophical problem of classification, which has been analyzed in a long tradition stemming from Aristotle's Categories. See Thompson, Categories, in 2 ENCYCLOPEDIA OF PHILOSOPHY 46 (1967).
5. See Riesman, Law and Social Science: A Report on Michael and
ers of research tools for practitioners are likely to do so also, thus facilitating and promoting legal practice in the newly recognized area, as well as altering the analogies lawyers and judges are likely to draw. Some law professors do not ask questions about curriculum because they implicitly assume that the current classification is optimal or perhaps inherent in the law. Others may think the current curriculum is adequate or that the questions of classification and division are not important enough to warrant attention. Still others may believe that curriculum change is best handled informally by the individual teacher. Problems of classification and division, however, may confront any given faculty when there is an overall curriculum review or when it is suggested that there be a change in the list of required courses, electives, research institutes, or service programs.

Wechsler's Classbook on Criminal Law and Administration, 50 YALE LJ 636, 642-44 (1941) (discussing the organization of courses and curricula). See also Gardner, Specialization in the Law School Curriculum, 81 U. PA. L. REV. 684, 687 (1933) ("Some [law school topics], like property and contracts, reflect popular notions about man's fundamental relations to his neighbor. Some, like torts, reflect what was once the judicial organization of Great Britain. Some like taxation, security transactions, or insurance, reflect a demand for instruction in some specialty."); Riesman, In Memory of Harold S. Solomon: Comments on Southern California's Flyer in Legal Education, 41 S. CAL. L. REV. 506 (1968) (discussing legal education reforms at U.S.C.); Riesman, Some Observations on Legal Education, 1968 WISC. L. REV. 63 (suggesting that law schools take an approach more closely oriented to social sciences); Stone, Towards a Theory of Constitutional Law Casebooks, 41 S. CAL. L. REV. 1, 8-11 (1968) (discussing the organization of casebooks).

6. This pattern is not intended to be exclusive. Certainly the needs of clients and practitioners may influence the adoption of a new legal field. See text accompanying notes 87-119 infra.

7. But see Kelso, Curricular Reform for Law School; Needs of the Future, 21 U. MIAMI L. REV. 526 (1967). "[B]y what criteria do our first year courses justify their continued required existence: frequency of application; social significance; doctrinal fundamentality?" Id. at 528. While Kelso supposed that fundamentality of doctrine is the usual answer, he questioned whether the property, torts, or contracts courses actually were fundamental, and suggested more topical courses. Id.

8. Plato, Aristotle, and philosophers typified by the "realists" of the Middle Ages believed that groups and classes of things are learned by reason or by observation; they are not simply mental conventions. See Hancock, History of Metaphysics, in 5 ENCYCLOPEDIA OF PHILOSOPHY 289, 292 (1967).

9. "[Alterations in content are] produced by the internal combustion of the professor in charge of the course, who, consulting his own notions of what was timely or, at any rate, what interested him, went ahead and changed the curriculum." Gellhorn, Commentary, 21 U. MIAMI L. REV. 536, 537 (1967). Similarly, another commentator maintains: "[T]he new 'area' is often recognized and articulated after the curricular change has already been established by the seepage of updated materials." Rutter, Designing and Teaching the First Degree Law Curriculum, 37 U. CIN. L. REV. 7, 11 (1968).

10. See, e.g., Stevens, Two Cheers for 1870: The American Law School, in
There are manifest reasons why Law and Aging should at least be considered a candidate for recognition as a new field for law practice, teaching, and research. The United States and other industrialized nations are experiencing an increase in the number and percentage of elderly in their populations that is unprecedented in the history of the world. Although in 1900 there were fewer than five million Americans over the age of sixty, amounting to about 4% of the population, there are now approximately thirty-two million elderly, constituting almost 11% of the nation. Demographic projections suggest that the percentage of elderly Americans will increase in the next half-century to perhaps as much as 17%. By one estimate, 24% of the federal budget currently goes to support programs for older persons, and within half a century such programs may require 40% of the budget.

Since differentiation among legal fields primarily affects legal teaching and scholarship, this Article derives criteria for the recognition of new legal fields from alternative visions of law schools—what they are and what they do. Applying these criteria to Law and Aging, the Article maintains that the time has come to recognize Law and Aging as a new field of law.

11. Law and Aging is not included in the standard lists of legal fields. See, e.g., ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF LAW TEACHERS 844-45 (1980). When the 7,877 teachers listed with the Association of American Law Schools were surveyed, 29 responded that they taught courses, seminars, or clinic programs in Law and Aging, 23 were involved in outside projects or programs, and 27 were doing research and writing in the field. Twenty-two professors listed themselves as using their own materials for teaching. (There are, no doubt, others in the field who did not respond to the survey.) See INSTITUTE OF LAW AND AGING, SURVEY OF NATIONAL LAW SCHOOL PROGRAMS AND MATERIALS IN LAW AND AGING 42-44 (1978). See generally Levine, Research in Law and Aging, 20 GERONTOLOGIST 163 (1980).


15. See Nelson, Time of Trial: The Burdens of Old Age on the Family, L.A. TIMES, Jan. 19, 1979, § 1, at 1, col. 1, at 22, col. 6. By another estimate, more than 30% of the Federal budget is spent on programs for the elderly. Samuelson, Busting the U.S. Budget—The Costs of an Aging America, 10 NAT'L J. 285 (1978). These estimates may be high.
I. FIVE VISIONS OF LAW SCHOOLS

Criteria for the recognition of new legal fields can be generated from different visions of legal education16 that reflect differing assumptions about purposes17 and methods.18 In this section, five such visions will be presented: the Practice Model, the Rules Model, the Principles Model, the Policy Model, and what may be a new Fifth Model. These models of legal education19 are based on historical epochs in the development of American law schools,20 but are used here as ideal types.21 In reality these models are not mutually exclusive; in the past,
several visions were simultaneously represented, and this is true within the law school today.

A. THE PRACTICE MODEL

In the earliest era of American legal education, most aspiring lawyers learned on the job. In the Practice Model, law is studied in a procedural and client-centered context. In apprenticeship training, the usual mode of practice learning, subjects of study are generated by the flow of cases. Thus, concepts are often raised out of logical order, skipped over entirely, or combined in various patterns, as determined by the facts of the cases. The senior lawyer guiding an apprentice may attempt to supplement the limitations of the training method by raising logically related questions or by lecturing. The mentor may also assign texts for study, or the student may choose a series of law texts to read. To the extent that texts are employed, the Practice Model is combined with another approach, typically the Rules Model.

22. This practice may have originated in England, where the Inns of Court dominated English legal education through about 1650; thereafter, lawyers either "read law" in law offices, or followed a well-known list of recommended books. P. SMrrH, A HISTORY OF EDUCATION FOR THE ENGLISH BAR 38-40 (London 1860). One nineteenth-century English writer on legal education advised against beginning law study by reading texts or attending lectures, maintaining instead that one should begin as a pupil in the chambers of practitioners. S. WARREN, A POPULAR AND PRACTICAL INTRODUCTION TO LAW STUDIES 396-403 (Am. ed. 1846) (1st ed. London 1835).

23. Beginning with the Colonial period, most aspiring lawyers prepared for the bar through apprenticeships. See A. Harno, supra note 17, at 19. A course of attendance in a law office was required in nearly all states. Clerke, Appendix to S. Warren, supra note 22, at 627. Of course, some might try to educate themselves solely out of books. See L. FRIEDMAN, A HISTORY OF AMERICAN LAW 525 (1973). Lincoln wrote that the "cheapest, quickest and best way" to become a lawyer was to "read . . . get a license, and go to practice, and still keep reading." Nortrup, The Education of a Western Lawyer, 12 AM. J. LEGAL HIST. 294, 294 (1969).


26. In the Colonial period, the books available to students gave no comprehensive view of the law. See P. HAMLIN, LEGAL EDUCATION IN COLONIAL NEW YORK 65-66 (1939). Coke's work, "the main reliance of all students, [was] inveighed against [for] the obscurity of its passages and the complexity of its arrangement," id. at 70 n.35, and was deemed a "disorderly mass of crabbed pandantry." Thayer, The Teaching of English Law at Universities, 9 HARV. L. REV. 169, 179 (1886). By the late eighteenth and early nineteenth centuries, "Whatever else might be omitted, in any case, Blackstone's Commentaries never were." Baldwin, The Study of Elementary Law, The Proper Beginning of a Legal Education, 13 YALE L.J. 1, 3 (1903). Blackstone taught for the first time "the continuity, the unity, and the reason of the Common Law," C. Warren, A HISTORY OF THE AMERICAN BAR 177 (1911), and thus was "the stimulus . . . for
B. **THE RULES MODEL**

The first American law schools that grew to supplement apprenticeship training provided their students with lectures and common law treatises or printed versions of the teachers' lecture notes. These presentations of legal doctrines were rule-oriented and often non-systematic. The early schools adopted the standard divisions of the common law as units for curriculum. These traditional titles did poor service as working classifications for fields of the law, however, since the topics bore little relation to each other, making it impossible to classify the law or apply logically consistent canons of distinction.27

The titles were grouped into "courses" in arbitrary fashion based on mere convenience.28 In the early law schools, it became necessary to divide the curriculum when the schedule of instruction lasted more than one year, or when there was more than one teacher. The development of a schedule of courses at Harvard, for example, was determined originally "by the necessity of keeping two professors occupied."29 Professor Greenleaf and Judge Story split the work between themselves, and then divided their own work into further compartments, each of which might combine two, three, or four texts. Although these original divisions were organized to suit the convenience of students and faculty, and not on the basis of the subjects taught, the courses nevertheless survived as the components of the Harvard curriculum.30 Even after the creation of the modern law school curriculum, the trend through 1920 was based less on an idea of "legal science" than on the requirements of a rather rigid mechanical system. "Legal 'titles,' which never possessed much logical significance [had] become stereotyped divisions of the law, whose size [was] somewhat arbitrarily determined."31

C. **THE PRINCIPLES MODEL**

Christopher Columbus Langdell is regarded as the inventor

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30. *Id.* at 364-65.
31. *Id.* at 367.
of modern American legal instruction\(^\text{32}\) by virtue of the changes he imposed in legal education after he became dean of the Harvard Law School in 1870. His conceptual ordering became the standard for law schools throughout the country.\(^\text{33}\) The often quoted introduction to his 1871 casebook sets forth his analytical approach:

Law, considered as a science, consists of certain principles or doctrines . . . to be traced in the main through a series of cases . . . . If these doctrines could be so classified and arranged that each should be found in its proper place, and nowhere else, they would cease to be formida-

ble from their number.\(^\text{34}\)

Langdell viewed the law as a science and the library as its laboratory; law consisted of principles which were derived from the cases by inductive reasoning.\(^\text{35}\) The task of legal scholarship was to state those principles. The content of each law course in a Langdellian model of legal education was determined by tracing legal principles through a line of cases; course boundaries were generated analytically from conceptual dividing lines.\(^\text{36}\)

The application of Langdell’s model led to the definition of legal fields in terms of their supposed underlying principles. With

\(^{\text{32}}\) See, e.g., J. Redlich, supra note 16, at 9. Gilmore, for example, wrote that “Langdell’s Cases on Contracts was the first casebook of all.” G. Gilmore, The Ages of American Law 125 n.3 (1977). But see note 42 infra.

\(^{\text{33}}\) Langdell’s method became predominant over time. See L. Friedman, supra note 23, at 534-35. At Notre Dame, for example, from 1869 through 1905 textbooks and lectures were the major instructional method; by 1905 the case method had been adopted and remained the dominant technique until 1953, when emphasis shifted to the problem method for second and third year students. See P. Moore, A Century of Law at Notre Dame 112 (1969). As of 1902, twelve schools had adopted the Langdellian system for their entire curriculum; 48 had adopted it in part; 34 maintained either a text book system, or a textbook and lecture system. See Huffcut, A Decade of Progress in Legal Education, 25 Report of the Twenty-Fifth Annual Meeting of the American Bar Association 529, 541 (1902). By 1920, nearly every American law school had assimilated Harvard’s basic curriculum. See J. Seligman, The High Citadel: The Influence of Harvard Law School 42-44 (1978). There were some holdouts, however. The University of Virginia Law School, for example, used a lecture system until the 1930s. J. Ritchie, The First Hundred Years: A Short History of the School of Law of the University of Virginia for the Period 1826-1926, at 56 (1978).


\(^{\text{35}}\) See Langdell’s 1886 address quoted in 2 C. Warren, History of the Harvard Law School and of Early Legal Conditions in America 374 (1908). Langdell’s method suggested that “the legal process was principally adjudication by logical reasoning deriving from immutable general principles.” A. Sutherland, The Law at Harvard 177 (1967).

\(^{\text{36}}\) Thus, for example, it is not difficult to state the conceptual dichotomies by which contracts can be distinguished from torts, torts from criminal law, criminal law from criminal procedure, or criminal procedure from civil procedure.
respect to contract law, for example, Grant Gilmore observed that "the idea that there was such a thing as a general law—or theory—of contract seems never to have occurred to the legal mind until Langdell stumbled across it."\footnote{37}

Of course, Langdell's innovations did not spring full-blown from his brow. The idea that law is a "science" had occurred to many before him,\footnote{38} along with the idea that legal education should be based on a "scientific" version of law.\footnote{39} Even at Litchfield, the first American law school, Judge Gould preferred that law be taught in a manner similar to "other" sciences as a system of consistent and rational principles, and organized his own textbook accordingly.\footnote{40} Gould declared it unsatisfactory to treat law as the compilation of positive rules, taught in a way to test the "mechanical strength of the reader's memory."\footnote{41} Lang-

\footnote{37. G. GILMORE, supra note 1, at 6. Of course, that contracts was a field of its own, with its own law, was hardly a novel idea. See, e.g., T. PARSONS, THE LAW OF CONTRACTS (6th ed. 1873). See generally A. REED, supra note 16, at 349.}

\footnote{38. Blackstone, for example, had written of a "science" of law, reducible to principles. 1 W. BLACKSTONE, COMMENTARIES *4. He also called equity a "science" by analogy to law, 3 id. at *55, and regarded legal judgments as "flowing" from reasons or premises. 3 id. at *379. See generally D. BOORSTIN, THE MYSTERIOUS SCIENCE OF THE LAW 20-25 (1941).}

\footnote{39. In this tradition, in the pre-Langdellian era at Harvard, Greenleaf wrote of "instruction in the science of law," and Story of a "scientific system of legal education." A. HARNO, supra, at 43.}

\footnote{40. See J. GOULD, A TREATISE ON THE PRINCIPLES OF PLEADINGS IN CIVIL ACTIONS, at vi-viii (2d ed. 1836). Hoffman, another early writer on legal education, recommended that the law student read certain books "in a progressive succession." D. HOFFMAN, COURSE OF LEGAL STUDY at vii (1817). Hoffman, like Gould, favored a systematic study based on principles, and referred to the statement of Sir William Jones in his Essay on the Law of Bailments (1786):

"The great science of jurisprudence, like that of the universe, consists of many subordinate systems, all of which are connected by nice links, and beautiful dependencies; and each of them, as I have fully persuaded myself, is reducible to a few plain elements, either the wise maxims of national policy and general convenience, or the positive rules of our forefathers, which are seldom deficient in wisdom or utility. If law be a science and really deserve so sublime a name, it must be founded on principle, and claim an exalted rank in the empire of reason; but if it be merely an unconnected series of decrees and ordinances, its use may remain, though its dignity be lessened, and he will become the greatest lawyer who has the strongest habitual or artificial memory."

D. HOFFMAN, supra, at x-xi. Thus, the Langdellian method of principles had been long foreshadowed, and without Langdell's repudiation of policy considerations.}

\footnote{41. J. GOULD, supra note 40, at ix. Judge Gould intended his treatise as instruction in "the science" of pleading. The doctrines were to be presented "not as a compilation of positive rules, but as a system of consistent and rational principles." Id. at viii. He considered "almost all our modern and most popular treatises, upon the various other titles of the common law" to be wanting as works of instruction in a "science" of law.}

For while every other science is taught, by a detailed explication of its
dell was not the first to believe that law students should learn principles from cases, nor were Langdell and James Ames the first to believe that the case method should be the basis of classroom teaching. Langdell was, however, the first to shape principles, the doctrines of the common law are usually exhibited, in our legal treatises, as if they were the insulated enactments of positive law—without reference to the reasons on which they rest. And thus the common law is presented in most of our books, rather as an art, than a science; and the acquisition of it made to depend, more upon the mechanical strength of the reader's memory, than upon the exercise of his understanding. But it has been left on record, by the highest legal authority, that 'the law is unknown to him, who knoweth not the REASON thereof.' An axiom, which cannot fail to command the assent of every intelligent mind. Id. at viii-ix. Similarly, Warren admonished the student to study books "of a scientific and elementary character" before attempting books written "for practical use." S. Warren, supra note 22, at 372.

The position that legal education best occurs "where the student extracts general rules and principles" by "searching out the proper principles in confused and complicated cases" was stressed a century before Langdell. S. Warren, supra note 22, at 411 (quoting Starkie, Law Lecture, 2 Legal Examiner & L. Chronicle 517, 518 (1833)). Contrary to popular belief, Langdell's Cases on Contracts (1871) was not the first casebook. See E. Bennett & F. Heard, A Selection of Leading Cases in Criminal Law (1856).

See J. Hurst, The Growth of American Law 261 (1950). Some evidence exists from which we can discern the use of the case method prior to Langdell. Clerke, who advocated the case method in 1846, see Clerke, supra note 23, at 628-29, conducted his own law school, id. at 630, and may well have used the method there.

John Norton Pomeroy's "method was not unlike the case system later perfected by Langdell. The students were expected to read cases and then to be questioned on them in classes." 1 P.C. Jessup, Elihu Root 61 (1938). Elihu Root recalled his teacher, Pomeroy, at NYU in the late 1860s:

Into the fields of conflicting decisions ... he would lead us with amazing vigor and enthusiasm, and presently order would appear, compelled by ... high intelligence in the application of fundamental principles to confused conditions ... . His method of working was an especially valuable example of thoroughness in the collection and testing of all necessary data before beginning to reason towards conclusions, and of breadth of view in determining what data were necessary...

Letter from Elihu Root to John Norton Pomeroy's son (1906), quoted in id. at 62. Henry McPike, Class of 1881 at Hastings College of the Law, recalled that Pomeroy used a case method at Hastings. Even in first-year courses, which were primarily lectures, Pomeroy would sometimes "pause and quiz the class, passing questions around indiscriminately, and treating all answers with gravity, no matter how far off any of them might be." In an upper year, Pomeroy "taught by 'the actual case method' referring constantly to the 'leading cases, from which the text rule was deduced, and urged and encouraged the constant reading and study of them.'" T. Barnes, Hastings College of the Law: The First Century 113 (1978) (quoting Hastings College of the Law of the University of California, Golden Jubilee Book 1878-1928, at 41 (1928)). Barnes explains that in the "Pomeroy System" the second year of courses was "inductive ... (working from the particular of cases to generalities of doctrines)." Id. at 110.
the whole program of a school upon these ideas. After Langdell's disciple Ames, the archetypal law teacher was a cross-examiner and discussion leader—a style we term Socratic.

Langdell's Harvard, a school devoted to "pure law," was actually a mixture of the models of legal education. His colleagues were less devoted than he to Langdellian purity, and even he did not totally eschew the methods of the Rules Model. Nor was his method of legal scholarship totally devoid of a policy-oriented approach. It is true that in the 1879 second edition of his casebook, Langdell rejected the notion that the logical integrity of a system of laws could be superseded by policy considerations. Though one might frame an argument on "substantial justice," the understanding of the contracting parties, or the avoidance of "unjust" and "absurd" results, Langdell wrote, "[t]he true answer to this argument, is that it is irrelevant." Seizing upon Langdell's statement, Oliver

44. J. Hurst, supra note 43, at 264.
45. The notion that law teaching is Socratic seems based on the Socrates of the *Meno* who teaches geometry to a slaveboy by asking questions. 1 THE DIALOGUES OF PLATO 279-84 (4th ed. B. Jowett trans. 1853). In the same vein, Socrates calls himself a midwife of the mind in *Theaetetus* 150, "and the triumph of my art is in thoroughly examining whether the thought which the mind of the young man brings forth is false and lifeless, or fertile and true." 3 *id.* at 245. In the *Sophist* 230-231, the "Stranger" describes those educators whose method is to "cross-examine a man's words when he thinks that he is saying something and is really saying nothing, and easily convict him of inconsistencies in his opinions." 3 *id.* at 378. This is a purging of prejudices through refutation. The Stranger also speaks, however, of other methods of instruction. Some attempt to educate through admonition, by roughly reproving errors. And, while the Sophists have a certain likeness to the "cross-examination" sort of education described, it is "the same sort of likeness which a wolf, who is the fiercest of animals, has to a dog, who is the gentlest." 3 *id.* at 379. Moreover, the Sophists teach an art of disputing about all things, and therefore erroneously appear all-wise to their disciples. 3 *id.* at 380-82. Socratic legal education is sometimes accused of being more like that of the Sophists. See J. Osborn, THE PAPER CHASE (1973); Kennedy, supra note 19, at 72-73.
48. Langdell included an appendix to the second edition of his casebook that consisted of a set of rules, albeit systematically arranged (as was, of course, Judge Gould's text). See 2 C. Langdell, A SELECTION OF CASES ON THE LAW OF CONTRACTS (2d ed. 1879) [hereinafter cited as Langdell on Contracts]. The rules were also published separately. C. Langdell, A SUMMARY OF THE LAW OF CONTRACTS (2d ed. 1880). Indeed, textbooks were widely used along with the case method. See J. Redlich, supra note 16, at 49-50. A search for principles through cases may have occupied Langdell's class time, but the students could not be weaned so easily from the old method.
49. 2 Langdell on Contracts, supra note 48, at 996.
Wendell Holmes, Jr., concluded: "He is, perhaps, the greatest living legal theologian. But as a theologian he is less concerned with his postulates than to show that the conclusions from them hang together." With all due respect, however, Holmes was unfair in his analysis. Although Langdell may have regarded logic as the touchstone of legal analysis, he also engaged in policy analysis of the most modern sort. Thus, the "ideal type" of the Principles Model seems never to have existed as such, even under Langdell.

D. THE POLICY MODEL

Throughout this century, there have been attempts to shift the emphasis of the law school from the Langdellian vision to what may be called a Policy Model. As early as 1909, Roscoe

50. Book Note, 14 N.Y. L. REV. (previously Am. L. Rev.) 233, 234 (1889) (unsigned, by Holmes). Holmes also noted:

[1] In this word "consistency" we touch what some of us at least must deem the weak point in Mr. Langdell's habit of mind. Mr. Langdell's ideal in the law, the end of all his striving, is the *elegantia juris, or logical* integrity of the system as a system.

If Mr. Langdell could be suspected of ever having troubled himself about Hegel, we might call him a Hegelian in disguise, so entirely is he interested in the formal connection of things, or logic, as distinguished from the feelings which make the content of logic, and which have actually shaped the substance of the law.

51. Langdell continued, immediately following the text which Holmes quoted, to write, "but, assuming [the argument about just results] to be relevant, it may be turned against those who use it without losing any of its strength." 2 LANGDELL ON CONTRACTS, supra note 48, at 996. Langdell then presented detailed policy arguments: when a hardship must be imposed on one of two innocent parties it is preferable to leave the situation in status quo; it is improper to impose a liability on which no limit can be placed; and liability should be placed on the party for whom it is easiest to make provision for the contingency. *See id.* The last of Langdell's policy arguments, in particular, has a modern ring. Cf. Calabresi & Hirschoff, Toward a Test for Strict Liability in Torts, 81 YALE L.J. 1055, 1060 n.19 (1972) (imposing accident costs on "the cheapest cost avoider"). Thus, the very exemplar of the Principles Model, Langdell's casebook, approached both the Policy Model and the Rules Model far more than is generally appreciated.

52. Johnson views 1930 as the date by which the "scientific historicism" of Langdell was widely abandoned for an approach that emphasized the social sciences, law as it actually functioned in society, sociological jurisprudence, or legal realism. (He finds that 1930 is also the first date by which legal education had become centered in the law schools.) W. JOHNSON, SCHOoled LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES 154 (1973). Dickinson still felt the need to argue in 1931 that "the time has come" to bring students into contact with more noncommercial fields of law, and to promote their taking a "legislative" attitude toward the law. Dickinson, Legal Education and the Law School Curriculum, 79 U. PA. L. REV. 424, 436 (1931). Gilmore wrote that by 1940, the jurisprudential revolution had succeeded and the "conceptualism" of Langdell was held up to scorn. G. GILMORE, supra note 32, at 86-87. Today, Langdellian conceptualism survives, see note 82 infra, along with scorn of it.
Pound called for the abandonment of the "method of deduction from predetermined conceptions" and for the adoption instead of a sociological jurisprudence emphasizing the human factor and the social structure within which law operates.\textsuperscript{53} This jurisprudence implied that the curriculum should be reorganized in response to social change and that law students should be trained for roles as decisionmakers. The legal realists further undermined the jurisprudential bases of the Principles Model by focusing attention on the factual realities of law and government.\textsuperscript{54}

Several law schools led the way in curricular changes after World War I.\textsuperscript{55} Columbia initiated an early round of extensive curricular debates on a "functional" legal education.\textsuperscript{56} Yale attempted the great experiment of bringing social scientists into the law school.\textsuperscript{57} The Johns Hopkins University made a short-lived attempt to treat law in the manner of a graduate school

\textsuperscript{53} See generally Pound, Scope and Purpose of Sociological Jurisprudence (pts. 1-2), 24 Harv. L. Rev. 591 (1911) and 25 Harv. L. Rev. 140 (1912).

\textsuperscript{54} See generally Gilmore, Legal Realism: Its Cause and Cure, 70 Yale L.J. 1037 (1961). For the conclusion that we are all realists now, see C. AuERBACH, L. GARRISON, W. HURST & S. MERMIN, THE LEGAL PROCESS 361 (1961).

\textsuperscript{55} In 1937, the University of Chicago curriculum received widespread attention when the school compressed and shifted private law material to make room for new courses. E. BROWN, LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE 98 (1948). Earlier, when the University of Chicago law school was organized in 1902-03, the planners "were influenced by the German system of legal education as they put together a curriculum committed to the 'whole field of man as a social being,'—a curriculum that extended beyond the 'pure law' of the Harvard model." F. ELLSWORTH, supra note 46, at 110. However, Beale, the funding dean, insisted that the Chicago curriculum be limited to "strictly legal subjects," and courses such as American Political Theory and Jurisprudence were abandoned. LEVI, THE POLITICAL, THE PROFESSIONAL, AND THE PRUDENT IN LEGAL EDUCATION, 11 J. LEGAL EDUC. 457 (1959).

\textsuperscript{56} The Columbia curriculum reforms of the 1920's turned away from law as a body of technical doctrine. Dean Stone noted the need for "re-arranging and organizing the subjects of law school study to make more apparent the relationship of the various technical devices of the law to the particular social or economic function with which they are concerned." Stone, The Future of Legal Education, 10 A.B.A.J. 233, 234 (1924).

\textsuperscript{57} In 1916 a committee issued "A Program for the Expansion of the Yale School of Law into a School of Law and Jurisprudence." Stevens, supra note 10, at 470-71. After World War I, there were movements to revise curricula, include social science approaches in courses, and take account of realist jurisprudence. "The new approach assumed . . . that the traditional categories of law are irrelevant . . . ." Id. at 473. In 1950, the Yale law curriculum of a later generation was reviewed by a committee of lawyers that concluded that there was justification for including in the curriculum courses from outside the traditional legal fields. Embree, How Should Lawyers be Educated? A Report on the Yale Law Curriculum, 37 A.B.A.J. 655, 657 (1951).
The research approach is embodied in the legal studies that were produced. See, e.g., Johns Hopkins University Institute of Law, Study of Civil Justice in New York: Survey of Litigation in New York (1931); Johns Hopkins University Institute of Law, Study of the Judicial System of Maryland (1930-32); Johns Hopkins University Institute of Law, Study of Judicial Administration in Ohio (1930-32).


60. A well known law school myth (albeit much exaggerated) labels the old and new approaches with the names of Harvard and Yale. See Navasky, The Yales vs. the Harvards (Legal Division), N.Y. Times, Sept. 11, 1966, § 6 (Magazine), at 47. Harvard's curriculum after the Langdellian reforms of 1877 was considered to be based on the "fundamental plan . . . to teach law in the strict sense of the word," excluding social science. Levi, supra note 55, at 464. When the curriculum (which had been revised in the interim in 1915) was revised again in 1934-37, the draftsmen acknowledged it might be criticized for over-emphasis on traditional law. See Simpson, The New Curriculum of the Harvard Law School, 51 Harv. L. Rev. 965, 980-81 (1938). Harvard's "new" curriculum was still characterized as three years devoted to "what our English brethren call ‘straight law.’" Simpson, Developments in the Law School Curriculum and in Teaching Methods, 6 Am. L. Sch. Rev. 1038, 1040 (1938). The new approach eventually had significant influence, even at Harvard: for example, what during the 1920s were "separate traditional ‘casebook courses’" in negotiable instruments, sales, and security devices, were combined in a single commercial law course. A. Sutherland, supra note 35, at 327.

61. While aspects of a policy perspective have achieved widespread acceptance, far more fundamental changes in the schools were called for by Lasswell & Mc Dougal, Legal Education and Public Policy: Professional Training in the Public Interest, 52 Yale L.J. 203 (1947), and Mc Dougal, The Law School of the Future: From Legal Realism to Policy Science in the World Community, 56 Yale L.J. 1345 (1947). Notwithstanding the many post-World War II curricula changes, Stevens concluded that the Mc Dougal-Lasswell challenge was largely ignored. Stevens, supra note 10, at 512-13, 526-27, 529-42. But see, e.g., Miller, Revising the Torts Course, 21 U. Miami L. Rev. 558, 559-60 (1967); A Symposium in Honor of Hardy C. Dillard: Legal Education, 54 Va. L. Rev. 583 (1968) (articles responding to Lasswell and Mc Dougal).


discipline. Northwestern perhaps carried the functional approach farthest. Harvard held out for decades for the "straight law" of "traditional 'casebook courses,'" until it too finally yielded, giving its influential imprimatur to the newer approaches. Today, what may be called the Policy Model of legal education has widespread influence and is particularly significant in those schools with upwardly-mobile aspirations.

The Policy Model has several facets. The law library, Langdell notwithstanding, is not the law's only laboratory. Lawyers must master data on society beyond the scope of case reports. The designation "casebook" has become a misnomer for what are often "heterogeneous collections of diverse materials," commonly labelled "Cases and Materials on Contracts," rather than merely "Cases on Contracts." Legal study often becomes

58. The research approach is embodied in the legal studies that were produced. See, e.g., Johns Hopkins University Institute of Law, Study of Civil Justice in New York: Survey of Litigation in New York (1931); Johns Hopkins University Institute of Law, Study of the Judicial System of Maryland (1930-32); Johns Hopkins University Institute of Law, Study of Judicial Administration in Ohio (1930-32).


60. See E. Brown, supra note 55, at 101.

61. While aspects of a policy perspective have achieved widespread acceptance, far more fundamental changes in the schools were called for by Lasswell & Mc Dougal, Legal Education and Public Policy: Professional Training in the Public Interest, 52 Yale L.J. 203 (1947), and Mc Dougal, The Law School of the Future: From Legal Realism to Policy Science in the World Community, 56 Yale L.J. 1345 (1947). Notwithstanding the many post-World War II curricula changes, Stevens concluded that the Mc Dougal-Lasswell challenge was largely ignored. Stevens, supra note 10, at 512-13, 526-27, 529-42. But see, e.g., Miller, Revising the Torts Course, 21 U. Miami L. Rev. 558, 559-60 (1967); A Symposium in Honor of Hardy C. Dillard: Legal Education, 54 Va. L. Rev. 583 (1968) (articles responding to Lasswell and Mc Dougal).

an interdisciplinary enterprise, with courses and research on law and some other discipline being commonplace. There is increased attention to public law and legislation, to field experiences, and to such "cultural courses" as Jurisprudence, Law and Society, and Comparative Law. As part of this trend, old course boundaries are redrawn, the traditional pigeonholes are discarded, and "new" courses are created.

In this model, the recognition of a new field in the law is a "phenomenon [which] takes place in response to dramatic shifts in technological, political and cultural organization of our society. Law, by its nature, reflects what is . . . ." This functional reorganization of the curriculum has been described by Brainerd Currie as the most important single development in legal education in half a century.

E. THE FIFTH MODEL: A NEW VISION?

A new vision of legal education may be emerging, though we may not yet be able fully to comprehend what it entails. Some find the clinical movement to be the most significant among recent developments. They see clinical education as not just skills training, but as education for professional responsibility. In the view of these educators, one key contribution of

63. In the functional approach, the economic, social and philosophic setting of doctrine is considered. E. BROWN, supra note 55, at 99.

64. Arthur S. Miller, in analyzing "the impact of public-law on legal education," discussed such items as the addition of new courses to the curriculum, the change in teaching materials, increased attention to the legislature and the bureaucracy, and nonlitigation skills and techniques. Miller, The Impact of Public Law on Legal Education, 12 J. LEGAL EDUC. 483 (1960).

65. The values of the Practice Model have been increasingly incorporated into the former law school program. In recognition that lawyers need a broader range of skills than case analysis alone could provide, there have been improvements in moot courts, and increased course offerings in drafting instruments, legal bibliography, and office and trial practice. Clinical courses are now widely available, in connection with these offerings many schools offer field experiences. See the early developments reported in A. REED, supra note 16, at 260, 283. See also Committee on Curriculum of the Association of American Law Schools, The Place of Skills in Legal Education, 45 COLUM. L. REV. 345 (1945); Frank, Why Not a Clinical Lawyer-School, 81 U. PA. L. REV. 907 (1933); Frank, A Plea for Lawyer-Schools, 56 YALE L.J. 1303 (1947).


67. See E. BROWN, supra note 55, at 134-56.

68. G. GILMORE, supra note 1, at 9. "If seashells are currency, we will have a detailed, intricate and comprehensive law of wampum." Id.


70. See, e.g., Marden, Introduction to COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, LAWYERS, CLIENTS & ETHICS: USING THE LAW SCHOOL CLINIC FOR TEACHING PROFESSIONAL RESPONSIBILITY at viii (1974)
clinical education is that it immerses the student in the realities of responsibility for an individual client. This experience helps the student become a "people-oriented counselor and advocate." Other recent law school trends emphasize the insights of humanism and psychology. The Langdellian model is rejected, not so much for its narrow vision of the law, but for its dehumanizing effects on the student, effects that are thought to result from harsh versions of the Socratic method.

A third current in the law schools includes attention to theories of justice, providing a rival to the scientific and instrumentalist orientation of the law-economics approach to law. This jurisprudence directs the student's attention to problems of values.

"Current," "movement," and "trend" are terms which suggest that it remains unclear whether our age is giving rise to a Fifth Model of the law school. It may be that clinical, humanistic, psychological, and ethical orientations are part of a coherent whole. If so, moral concern for the individual may be a theme that connects all of the orientations that are a part of the Fifth Model.

F. THE FIVE VISIONS TODAY

Schools approximating each of the five visions or models of legal education coexist today; moreover, a law student at any school may be exposed to each. The office apprenticeships of the nineteenth century survive in such modified forms as certi-
fied student practice\textsuperscript{75} and clinical\textsuperscript{76} programs. The Practice Model also underlies other experiences that are important parts of many students' legal education, though not always regarded as such by curriculum planners: summer legal employment,\textsuperscript{77} post-graduation judicial clerkships,\textsuperscript{78} and the informal instruction of new lawyers by their seniors in larger firms or in the courthouses.\textsuperscript{79} The nineteenth century system of lectures, or lectures and texts with rules to be memorized, survives in bar review courses. Continuing education programs for lawyers sometimes also employ a nineteenth-century Rules Model of legal education.\textsuperscript{80} Most first-year courses, and many upper-year courses, stress a system of logically organized principles taught through cases by Langdellian methods in accordance with the Principles Model.\textsuperscript{81} Following the Policy Model, many courses are also likely to supplement case analysis with considerations of policy.\textsuperscript{82} Moreover, unlike their predecessors of a hundred years ago,\textsuperscript{83} lawyers now generally precede their formal legal training with four years of liberal arts or technical

\textsuperscript{75} On certified law student programs, see Council on Legal Education for Professional Responsibility, State Rules Per mitting the Student Practice of Law (2d ed. 1973).

\textsuperscript{76} See note 65 supra.

\textsuperscript{77} On the rise of the custom of student clerkship in law firms, at least for better students and better schools, see J. Seligman, supra note 33, at 91.

\textsuperscript{78} See generally Oakley & Thompson, Law Clerks in Judges' Eyes: Tradition and Innovation in the Use of Legal Staff by American Judges, 67 Calif. L. Rev. 1286 (1979).

\textsuperscript{79} One group of educators, for example, came to the conclusion that it is the function of the bar or others, not of the law school, to provide practical instruction bridging the gap to practice. University of Michigan Law School, The Law Schools Look Ahead: 1959 Conference on Legal Education 11 (1959).


\textsuperscript{81} See text accompanying notes 32-51 supra. In 1950 a law professor, whose views are not atypical of teachers of basic courses, wrote, "Yes—I am an old-fashioned fellow; I am still foolish and orthodox enough to believe in the 'first principles of our common law,' as a medium of class instruction." Wormser, "Cases on Private Corporations", 2 J. Legal Educ. 485, 487 (1950).

\textsuperscript{82} But see Cohen, Introduction to The Law School of Tomorrow 3 (D. Haber & J. Cohen eds. 1968) (stating that there is still a "widespread and deeply felt notion that the law schools of today [1968] are, in the main, trade schools concerned more with sharpening how-to-do-it skills than with the consequences of doing it, or with or whether the how-to-do-it should be done").

\textsuperscript{83} In the nineteenth century, it was not customary for law schools to require any prior college work. See L. Friedman, supra note 23, at 527. While it has been said that the Harvard of Story's and Greenleaf's era consisted mostly of college graduates, id. at 528, the Harvard rules for the Story-Greenleaf years declared "No examination and no particular course of previous study are necessary for admission . . . ." D. Hoffman, supra note 40, at 556.
studies at college,\textsuperscript{84} which may facilitate their ability to understand legal doctrine in its social and cultural context. Liberal arts education, clinical experiences, humanistic teacher-student relationships, and emphasis on individual-oriented law and on ethical questions, all contribute to an appreciation of the human dimension of the law consistent with the emerging Fifth Model of the law school.

Education matching any of the five visions has its value. The purposes of each model are varied and complex, but if one were to characterize each in a phrase, one might say that the Practice Model eases the student's transition into the day-to-day role of his craft; the Rules Model facilitates entry into the profession by supplying information useful for passing bar exams and for analyzing basic legal questions; the Principles Model teaches how to "think like a lawyer"—it instructs students in one of the modes of analysis useful for lawyering; the Policy Model provides education for a legal career recognizing that lawyers are, of necessity, lawmakers; and the Fifth Model helps the student function in the human context of legal practice.

II. CRITERIA FOR RECOGNIZING A LEGAL FIELD

In the past, the recognition of subjects for inclusion in the curriculum of law schools has not always been approached systematically.\textsuperscript{85} One law school will respond to a major new social development by adding a course in Law and Atomic Energy, others will not. Predilections of individual textbook writers have been followed by some professors, but not by others. How systematically does the usual faculty, for example, consider the questions raised by one professor about instituting a course in Art and Law:\textsuperscript{86} does the proposed course define a field and do legal activities involving the subject frequently


\textsuperscript{85} See note 9 supra and accompanying text.

\textsuperscript{86} See Merryman, A Course in Art and the Law, 26 J. LEGAL EDUC. 551 (1974). "A related source of interest in this field was a desire to determine whether it really was a field. I took a great deal of razzing from colleagues who thought the whole enterprise frivolous and insubstantial . . ." Id. at 552. See also Kelly, A New Nominee for the Curriculum—Food, Drug and Cosmetic Law, 3 J. LEGAL EDUC. 97 (1959); Rabin, Administrative Law In Transition: A Discipline in Search of an Organizing Principle, 72 Nw. U. L. REV. 120 (1977); Rasco, The Need for a Latin-American Program in the Law School Curriculum, 2 J. LEGAL EDUC. 180 (1949).
arise in real life? This section considers criteria, appropriate to each of the five models of legal education, that help in determining whether a separate field of study should be recognized. The proposed field of Law and Aging will be tested against each of the criteria.

A. CRITERIA UNDER THE PRACTICE MODEL

"Law is what lawyers do" reads the simplest, if somewhat circular, definition of law.87 A change in the role of lawyers would thus justify, even require, revision of law school curricula under the Practice Model, which recognizes a new field of law on the basis of practical considerations rather than on any unifying conceptual theme.

Lawyers today in both private and government practice do increasing amounts of Law and Aging work that requires a special expertise.88 Much of this work involves the public benefit programs: Social Security,89 disability,90 Supplemental Security Income,91 Medicare,92 Medicaid,93 and veterans' benefits.94 Government social service agencies that distribute benefits to the elderly employ lawyers to write regulations and adjudicate appeals. Legal services programs and others use lawyers to challenge rules and awards.95 There are also opportunities for remunerative private practice under the Employee Retirement Income Security Act of 197496 and the Age Discrimination in Employment Act of 1967.97 The laws are complex and the amounts involved are vast: pension funds of over $470 billion,98

87. Compare the idea that law (i.e., the rules of law) consist of what judges (or law officials generally) do. See K. Llewellyn, The Bramble Bush 12 (1960 ed.).
90. Id.
91. Id. §§ 1381-1383c.
98. At the end of 1978, the combined assets of private pension funds amounted to $321 billion; the retirement systems of state and local governments had assets of $148.5 billion. Raskin, Pensions Funds Could be the Unions' Secret Weapon, FORTUNE, Dec. 31, 1979, at 64. Another estimate of the assets of the state and local systems, as of 1975, put the figure at over $100 billion. Pen-
social security payments of almost $93 billion annually, and other government programs for the elderly of over $24 billion annually. Another criterion for recognizing a field of law under the Practice Model is the existence of a distinct group of clients. There are perhaps thirty-two million potential clients for lawyers expert in Law and Aging. The size of this group, along with the increased militancy of the elderly in asserting their rights, indicate that Law and Aging is a growth area for the practice of law.

In addition, if a field of law is administered by separate courts, it can profitably be considered a separate field of law under the Practice Model. The legal realists of forty years ago suggested that we recognize specialized government administrative agencies as "courts" of a new kind and establish new courses for each one. Although there are no special courts dealing with problems of the elderly, there are administrative tribunals that frequently rule on the specialized claims of the elderly. By recognizing Law and Aging as a field of study, law schools could prepare students for practice in these forums.

B. CRITERIA UNDER THE RULES MODEL

Under the Rules Model, students learn rules that are stated in didactic texts. The existence of a distinct body of knowledge is a criterion for the definition of a field of law under this model. The volume of research in Law and Aging increases each year. The Law and Aging bibliography prepared by the University of Southern California Law Center Library shows that the number of works published annually in this area has doubled and redoubled each year since 1975. The American
Civil Liberties Union series of handbooks dealing with the rights of various groups has been extended to the elderly, and two series of teaching materials for Law and Aging are being issued. These materials help to create the very field they deal with by facilitating legal research and the teaching of courses.

Traditionally, under the Rules Model the definition of law courses has also been influenced by considerations of educational practicality and convenience which, regardless of the model that predominates, remain important considerations today. For example, as David Riesman has said, there is a division of labor among courses as well as a balancing of personnel, library resources, and such. Moreover, law schools are not immune to factors causing overall trends in universities today: the rise of multi-disciplinary activities; the stress on "relevance," defined as short-term practicality; the willingness to engage in public service activities; the responsiveness to the availability of outside non-tuition funding; the search for programs attractive to new student populations in the face of pro-


105. The Senior Adults Legal Assistance program in Palo Alto, California, is preparing, under Federal grant, a series: S.A.L.A. Curriculum Materials on Aging and the Law. The Institute of Law and Aging of George Washington University has prepared a Law School Series of materials on Legal Problems of the Elderly, regarded as "unpublished" but available upon request.
106. Additionally, the NSCLC Washington Weekly of the National Senior Citizens Law Center publishes current case law, legislative, and agency developments; the Gerontologist regularly runs law-related articles; the Journal of Gerontology has a regular update on periodical literature in Law and Aging; and a new series of reprints and monographs, Papers in Law and Aging, is forthcoming from the University of Southern California. Among manuals and symposia available on the subject, see Duke University Center for the Study of Aging and Human Development, Legal Problems of Older Americans: Proceedings of a Conference (1975); National Council on Senior Citizens, Inc., The Law and Aging Manual (1975); J. Weiss, Law of the Elderly (1977); Special Section on Legal Problems of the Elderly, 9 Conn. L. Rev. 425 (1977); Symposium: Law and the Aged, 17 Ariz. L. Rev. 267 (1975).
107. A number of themes can be identified that raise questions fundamental to the field of Law and Aging. Can the nation "afford" the increasing number of retired persons? How should government programs for the aged be organized and financed? Is it legitimate for the law to deal with older persons in terms of their age, or does such a practice constitute age discrimination? Is it possible to provide older persons with autonomous, independent lifestyles comparable to those enjoyed by them throughout their adult years? For a discussion of the major substantive topics and themes in Law and Aging, see Themes and Issues, supra note 103.
108. See Riesman, supra note 5, at 643-44.
jected declining numbers of traditional university-age students; the attempt to combine vocational usefulness with other, liberal, academic goals; the attempt by upwardly-mobile schools to stake out areas in which distinction can be achieved, taking account of social need, weakness of competition, and existing strengths; and so on. While these items may not give rise to an intellectual justification for any given course or activity, they nevertheless reflect pressures actually at work. No extensive discussion is needed to demonstrate that teaching, research, and related activities in Law and Aging are responsive to these demands.

C. CRITERIA UNDER THE PRINCIPLES MODEL

Under the Principles Model, axioms of law are studied through case analysis, and each conceptual field of law is thought to have its own set of principles. This model of legal education requires that fields of study have theories and concepts that are so interrelated that they appear to stem from an original set of axioms. This can be considered a Langdellian requirement. Law and Aging has certain unifying themes, but may not meet this criterion of rigor. There exist other fields of law that are already recognized, however, that may not meet this axiomatic standard either. Moreover, there is more than one way to achieve axiomatic rigor. Langdell himself discarded cases that were not in accord with the principles he had perceived. Thus it may be that some subset of the cases on Law and Aging would satisfy the Langdellian requirement of axiomatic rigor.

A post-Langdellian version of this criterion may also be proposed. Although legal scholarship today still strives for sci-

109. Langdell's curricular divisions at Harvard have been contrasted with those adopted contemporaneously by Pomeroy at Hastings. See note 43 supra. A Pomeroy partisan writes that for Langdell, the law was "reduced to so many discrete groupings of doctrines reflecting a practical development that was principally jurisdictional and 'remedial.' . . . What parts should be taught was, of course, a matter of curriculum planning, though largely dictated by the practical dimension . . . ." T. BARNES, supra note 43, at 111. By contrast, "[t]he Pomeroy System was above all a systematic, logical structuring of branches of the law . . . . [T]he arrangement and relationship of one branch to another . . . allowed for creative systematization." Id. at 101-02. In every branch of law, Pomeroy built an architectonic structure differentiating primary rights and duties and remedial rights and duties, with increasingly fine and detailed subdivisions. Id. at 102-03, 107.

110. See Themes and Issues, supra note 103.

111. "The vast majority [of cases] are useless, worse than useless, for any purpose of systematic study." C. LANGDELL, supra note 34, at viii.
scientific principles with intellectual coherence, it has largely abandoned Langdell's nineteenth-century model of natural science, and has substituted the analogy of the twentieth-century social sciences. The prototype of this trend was the use of field observation methods by Underhill Moore at Yale to study the effects of various permutations of parking regulation schemes.\footnote{112} In contemporary scholarship, Richard Posner has called for "the application of scientific methods to the study of the legal system . . . to discover and explain the recurrent patterns . . . —the 'laws' of the system."\footnote{113} In this approach, a field would be an appropriate unit of "legal science" if regularities were discoverable through a social science method.

Law and Aging may well satisfy this criterion. Economists have found gerontology an "important [though still] relatively unexplored, area of economic analysis."\footnote{114} \footnote{113} Against this demonstration of interest, however, some have expressed disillusion.\footnote{115} Law and Aging as a field, if established by virtue of this criterion, thus runs the risk of standing or falling with the fortunes of the reputation of the external social science employed.

Another criterion for determining if an area represents a distinct field of study is if the substantive rules of the subject matter differ from those in other fields. The existence of differing rules implies differing underlying axioms, even if the axioms themselves cannot yet be perceived. This criterion was applied by the initiator of Stanford's Art and Law course to determine whether the subject matter constituted a field.\footnote{116} He found that works of art, artists, and institutions in the art world were treated, for legal purposes, differently from those in other spheres of society, and thus concluded that special rules of law

\begin{footnotesize}


115. Professor Gilmore has written:
After two hundred years of anguished labor, the great hypothesis [that there are observable regularities in social behavior or in societal development] has produced nothing . . . .
One lesson which we can draw from all this is that the hypothesis itself is in error . . . . So far as we have been able to learn, there are no recurrent patterns in the course of human events; it is not possible to make scientific statements about history, sociology, economics—or law.


116. See Merryman, supra note 86, at 552.
\end{footnotesize}
applied to the art world. Applying this criterion to the elderly, there are many statutes that treat older people differently than the young. In addition, many statutes that are age-neutral on their face have special applicability to the elderly, such as the laws on inheritance, wills, probate, estate tax, civil commitment, conservatorship, and guardianship. The existence of a distinct body of law relating to the elderly suggests the possibility that underlying axioms may be derived and that Law and Aging is an appropriate candidate for recognition as a field.

D. Criteria Under the Policy Model

Under the Policy Model, sociological considerations are integrated into the study of law in an attempt to deal with public policy issues. Legal and nonlegal data supplement case analysis. The primary criterion for the recognition of a field under this model is the determination of whether society faces a significant group of interrelated problems that could benefit from unified legal treatment. Proponents of this model maintain that the traditional formal categories of law, shaped by accident and maintained by tradition, obscure the social problems with which law actually deals; the traditional framework thus yields an artificial perspective. Under the Policy Model, law is reorganized along more functional lines, corresponding to the types of human activity involved.

The problems of the elderly encompassed in a course on Law and Aging represent a body of study suitable for a functionally defined course. Legal questions affecting the elderly involve broad questions of social policy. Their solution requires knowledge of legal and nonlegal data and an understanding of the social, economic, historical, and philosophical issues raised. Thus, for example, the laws affecting mandatory retirement should not be altered without an understanding of the relationship between retirement policies and issues of inflation, unemployment, and education.

117. Id.
119. See generally Themes and Issues, supra note 103.
Another criterion under the Policy Model might be whether the client group in question sees itself as deserving new "rights" and separate legal treatment. This is a related, but less mundane, version of the Practice Model criterion, sub which dealt with the existence of clients. Here the clients not only meet Marx's criterion for a class objectively having a common interest, but also that for a class subjectively recognizing themselves as a separate social group. For example, it became necessary to train lawyers in the field of race relations and, more recently, in the field of women's rights, not because of any sudden shift in the ethnic and sexual demographic statistics, but because members of the relevant groups increasingly recognized themselves in such terms when considering legal claims, and turned to the law for specialized legal protection.

Analysis linking a change in ideas to the emergence of the elderly as a self-conscious group belongs to the perspective of the sociology of knowledge, or social construction of reality, as propounded by thinkers like Karl Mannheim. Different groups have their own unique historical experiences, which give rise to different interpretations of the world, and therefore ultimately to different systems of knowledge. Although it has been argued that the elderly retain their lifelong political orientation and are too disparate in interest and ideology to consider themselves part of a unity, there are evidently large numbers of elderly who recognize a shared interest. Under a sociology of knowledge approach, the development of the elderly as a social group sharing certain experiences explains the emergence of such ideas as age discrimination, elder's rights, "gray power," and the field of Law and Aging. Lawyers and scholars, since they are groups dependent on their clients and subjects, come to share these concepts with the elderly.

E. CRITERIA UNDER THE FIFTH MODEL

Under what may be an emerging Fifth Model of the law

120. See text accompanying notes 87-102 supra.
school, the student is trained to focus on the individual human needs and rights of the client. Perhaps an appropriate criterion for recognizing a field under this vision of legal education is whether the candidate field requires the individual lawyer to develop a particular interpersonal capability. Some fields, for example, require particular sensitivities if the lawyer is to interact successfully with clients—perhaps poverty law, prison law, and similar fields. Law and Aging, as a field for counseling and advocacy on behalf of individual clients, satisfies this criterion. Many professionals—including lawyers, psychiatrists, social workers, and others—exhibit a bias or personal distaste that inhibits them from effectively serving old and infirm clients. A course enabling lawyers to overcome this limitation on their professional capacities would thus serve a special function.

A different criterion that might be associated with the Fifth Model is whether a candidate field encompasses distinct issues of values and justice. Under this criterion, Law and Aging can make a contribution to the law school curriculum. Treatment of the elderly by society raises many complex ethical issues, such as whether differential treatment of the elderly constitutes invidious discrimination. A number of unique factors bear on this question and render the issue of discrimination against the elderly analytically distinct from discrimination against other groups. The middle-aged majority makes laws for the elderly, but each member of the majority hopes or expects to become old some day. In addition, the old have had their turn at whatever special advantages the middle-aged enjoy and they are, moreover, often different in important ways from the middle-aged. At the same time that the elderly receive group-specific disabilities, they also receive group-specific benefits. As a result, we find the seeming paradox of advocates of the rights of the elderly condemning "discrimination" while they affirm "reverse discrimination." Because quite different arguments are voiced in the factual context of age discrimination than are raised in the context of race relations, the question of


127. See Themes and Issues, supra note 103.
discrimination in the context of the elderly makes a special contribution to the student's education in issues of values and justice.

A third criterion for a new field under the Fifth Model may be whether recognition of the field makes some special contribution to assisting individuals with their legal concerns. Law and Aging satisfies this criterion as well. Lawyers, whether informed or not, will be making important decisions affecting elderly persons in the years ahead.\textsuperscript{128} The youth-dominated culture of America leads many persons to ignore the problems of the elderly until they face such problems personally. Adding a course in Law and Aging to the law school curriculum would be a step towards educating lawyers to make decisions affecting older people intelligently, would encourage research, and would help enlighten the growth of legal doctrine and legislation. It is hoped that after taking such a course the next generation of lawyers would be better able to deal with problems affecting tens of millions of Americans.

III. CONCLUSION: DOES IT MAKE ANY DIFFERENCE?

Within the criteria imposed by the five different visions of the law school, Law and Aging is a suitable topic for recognition as a separate field of study. Within a Practice Model of legal education, if law is what lawyers do, then indeed many lawyers already "do" Law and Aging, and the number of specialists, both within and without government agencies, is increasing.\textsuperscript{129} There is a large and growing clientele with needs to be served. Under the Rules Model, it was noted that there is a considerable and increasing body of knowledge on Law and Aging.\textsuperscript{130} There are also many practical considerations which may tip the scales in favor of separate offerings in Law and Aging for law schools of all orientations. Although there may be doubt under the Principles Model as to whether there are underlying principles approaching Langdellian axiomatic rigor evident in the case law on Law and Aging, a post-Langdellian criterion of law as science may be met in the social scientific treatment of Law and Aging.\textsuperscript{131} There is also a substantial body of law treating the elderly differently from other persons

\textsuperscript{128} Levine, \textit{People-Oriented Law Confronts Problems of the Elderly}, 1 Crres—(1980).
\textsuperscript{129} See notes 88-97 supra and accompanying text.
\textsuperscript{130} See notes 103-07 supra and accompanying text.
\textsuperscript{131} See notes 112-14 supra and accompanying text.
that may some day be organized in axioms of a traditional Langdellian type. In considering the Policy Model, it was argued that the problems of aging should have available the fullest contribution the law can make, especially since the elderly are increasingly vocal in their demands for specialized treatment. Within the Fifth Model, recognition of Law and Aging as a new field of law would help the future lawyer handle professionally a distinct set of interpersonal relations with a special client group and would raise unique issues of values.

It may be objected that it is not very meaningful to consider whether one set of topics or another should be recognized as a separate field of law. Since the goals of law schools can be achieved through any of a variety of course offerings, it is understandable that a good deal of ridicule has been leveled at the renaming of courses. After all, as Walter Wheeler Cook suggested in another context, line drawing between classifications is more or less arbitrarily done for the purposes of convenience: any given material can be organized according to various schemes.

Moreover, even if a new field of study, like Law and Aging, is recognized, there is no guarantee that a course will be listed in a law school's bulletin or that anyone will take it. The three-year substantive law curriculum is already overcrowded; skill courses and courses intended to provide broad perspective on law in society make further demands on student time. Observers remark that most law students prefer "bread and butter" courses which give "pure, old-fashioned Hessian-training"—rule-oriented courses that will meet client demands.

Nevertheless, questions about the "proper" subdivisions in the law curriculum are important. Historically such questions

132. See notes 123-24 supra and accompanying text.
133. See notes 125-28 supra and accompanying text.
134. The use of specific subject matter courses for wider curricular goals arose once law schools abandoned the mission of teaching all of the law. See Kelso, supra note 7, at 529. When the goals of the law school curriculum are expanded to go beyond the teaching of specific legal doctrines, such as contributing to reform of the legal order by training lawyers to advance the cause of social justice, most any course may be used as a vehicle to this end. See Allen, One Aspect of the Problem of Relevance in Legal Education, 54 VA. L. REV. 595, 605 (1968); Pincus, Reforming Legal Education, 53 A.B.A.J. 436, 437 (1967).
136. See Prosser, The Ten Year Curriculum, 6 J. LEGAL EDUC. 149, 151 (1953).
have played a crucial role in the evolution of legal culture. Differences in the organization of curricula are decisive for law because they establish and endorse different epistemological categories and values. As David Riesman said:

Whether we go all the way with Kant or not, the categories in which we view "reality" are obviously of vital importance. . . . A division of a criminal law course into categories of "larceny," "arson," and "insanity" will tend to engender one kind of attitude, and "prevention of socially undesirable behavior" and "the problem of conflicting values" another, preferable, point of view.138

Thus, Riesman regards the choices made by law professors not only as necessary, but as important in guiding legal thinking towards a selected matrix of social issues. The enterprise of reflecting upon how and why we categorize our intellectual universe in the law and come to recognize new fields may stimulate similar questioning about established courses and fields. The major remapping of the law a century ago that gave us such fields as contracts139 and torts140 may now be due for reconsideration to reflect changes in legal practice and society. The curriculum of the future141 may be conceived less in terms of corporations and property as reified entities, and more in terms of the needs of individual human beings and of the society.

138. See Riesman, supra note 5, at 642.
139. See text accompanying note 37 supra.
140. There was no law book on the subject of torts until 1859. See White, The Intellectual Origins of Torts in America, 86 Yale L.J. 671, 671 (1977).