





# 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>

\*This paper constitutes the somewhat revised text of an address by the author at the Law Alumni Association Annual Luncheon Meeting and Duke Law School Centennial Observance, April 20, 1968.

†A.B. 1917, Law 1920, 1921 Duke University; B.A. (Juris.) 1923, B.C.L. 1924, M.A. 1928 Oxford University. Professor Emeritus of Law, Duke University.

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































