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## The Vurpillat Era 1918-1923

THE NOTRE DAME LAW SCHOOL, DURING THE LONG tenure of William J. Hoynes, had taken rank among the better law schools of the country. But was there a sharp decline in its quality as well as in its size during the last years of this era? This question is raised by a letter written in 1918 by the man who was to succeed Hoynes as dean, Francis J. Vurpillat. With the outbreak of World War I, the number of students fell off sharply, but did the quality of the school go into an eclipse which would merit the severe charges lodged against it by the Vurpillat letter?

In this letter, addressed to Father John W. Cavanaugh, president of the university, Vurpillat states that he feels bound in duty to make known to the president his opinion on the state of the law school, and then lists his severe criticisms under five headings and adds a fact which he thought confirmed their validity. His first criticism was that the law course was treated "in its establishment, maintenance, conduct, methods of teaching and discipline, and standards of grading and graduation the same as the University treated the preparatory and common college courses." This, he asserted, was a basic error because "the law is a professional course, presumably a higher course, and should be regarded and treated accordingly. Law cannot be taught successfully in this manner and the result is that our Law School is discredited . . . by the University itself; is, therefore, not given such consideration and encouragement as it should receive; is generally regarded by the students and many of the faculty, clerical and lay, as an inferior Law School. . . ."

In his second criticism Vurpillat contended that "It is an impossibility . . . to conduct a Law School without an official, active, responsible head and a law organization, each respectively vested with the general jurisdiction . . . which can be exercised only by a lawyer and the law faculty . . . and yet, our Law School, the only one in the country to my knowledge, is actually trying to succeed without a law head or a law organization."

In his third criticism, Professor Vurpillat charged lack of uniformity in teaching methods and of co-ordi-

nation in the faculty. He asserted that "in the Law Department there must be uniformity in methods of teaching and discipline, in systems of class records, examinations and grading. . . . In this way alone can there be harmonious and concerted action by the faculty and uniform and satisfactory work by the students. In this way, too, will it be possible to secure such coordination in the faculty as will attain the highest efficiency in their work and the largest measure of success for the students."

The fourth indictment was leveled against the quality of the graduates. "The present system of grading and graduation of law students . . . is responsible for the conferring of law degrees . . . upon certain unqualified and incompetent men who soon appear before the bar examiners, make ignominious failures and reflect discredit upon the University." He continues, "Nor is it to the credit of the present system that the Law Department sends out many men of exceptional qualifications who do succeed, because this is accomplished in spite of these adverse conditions . . . and redounds solely to the efficient work of the professors and the ambition and earnest efforts of these students themselves." Interesting observations follow: "The law student is graded and graduated according to the general system applied in all the courses—a 70% passing grade . . . independently determined by the teacher of the respective classes. As each subject is passed . . . the next subject is taken up and passed in like manner until the final quarterly examination entitles the senior to his degree. . . . This system may be satisfactory for courses

that are varied and independent subjects of study, but not so in the law course which presents but one subject, continuous, harmonious, dependent and entire—the law. Although of necessity divided into branches for logical treatment and taught by several professors, these classes and efforts must be co-ordinated and conducted under the supervision of the dean so as, in effect, to teach but one subject—the law.”

The fifth criticism touches on the physical facilities which are declared wholly inadequate. “The present conditions and places afforded for teaching law are not conducive to creating the wholesome law atmosphere essential to classify the course and give it the special dignified character of a prominent professional course.” The writer also found the library very inadequate in working space.

The sixth and final heading is not a criticism, but a fact confirming the validity of the criticism. He states that “our Law School is not recognized as of sufficient grade or standard to be entitled to admission to the Association of American Law Schools.” Application for admission to the association had been turned down the previous year.<sup>1</sup>

What credence is to be given these criticisms and observations of Professor Vurpillat? Certainly, the criticisms are constructive and if the law school deserved them the situation must have been intolerable. The fact Vurpillat states to validate his criticisms cannot be gainsaid. The Notre Dame law school had not been admitted to membership in the Association of American Law Schools in 1918, and it would not be admitted

until 1925, several years after the Vurpillat era. Then, the law quarters in Sorin Hall which had been spacious in 1889 when there were only about thirty-five students had become very inadequate thirty years later when there were some two hundred students. The overcrowded library must have been a particularly bad situation.

There was also ample reason for the first criticism. The law students were considered as just another group of college students, and even in the conduct of classes and grading, they were held to the same regulations as all other students. Their professional status was not properly recognized until many years later, a long time after the admission requirement was raised to include four years of collegiate study. At the time Professor Vurpillat wrote, law was simply one of the several colleges, and students entered upon its study as they did upon all other college courses, immediately after earning a high school certificate or the equivalent education.

Under the grading system and requirements for graduation fifty years ago, it was not only possible but even likely that degrees were conferred on some unqualified students in law and in other divisions of the university. Vurpillat was right in stating that a student could pass every class in his college course with a minimum passing grade of seventy percent and at the end be eligible for graduation. Only years later was a qualitative average considerably above the minimum passing grade for a class made a requirement for the receiving of a degree. Nevertheless, the writer conceded that there were many graduates with exceptional qualifications, most

probably the majority, which in context indicates that students of quality and with strong motivation were among those admitted to the study of law. As for "ignominious failures" in the bar examinations, such failures probably were few. In the preceding chapter was noted the article in the *Chicago Law Journal* for October 1886 which highly commended the Notre Dame Law School for the success of its graduates in the bar examinations, and in a later chapter attention will be called to the generally successful record of law graduates in the bar examinations through the years.

There was basis in fact for some of Professor Vurpillat's criticisms of the Notre Dame Law School of 1918, but his charge that there was no "official, active, responsible head" of the law program is patently exaggerated. Dean Hoynes was still the official head and there is no reason to think that he had lost his sense of responsibility. It is credible, however, that failing health had slowed his activity and impaired his active direction, supervision and co-ordination of the law program. It was shortly after this charge was made, probably in the summer of 1918, that the decision was reached to retire him from the deanship. This decision may have been arrived at independently of the Vurpillat letter or it may have been influenced by it. The exaggeration in this charge is not easy to explain, and perhaps the ambition to succeed Hoynes as dean—ambition which was voiced in a subsequent letter—led Vurpillat subconsciously to overstate the facts and describe the law school, including its disorganization in teaching methods, as much worse than it actually was.

Father Cavanaugh did not answer this letter of criticism. At the time he received it, or shortly thereafter, he knew that he was about to enter on his last year as president of the university. He, therefore, filed it with the notation: "For the attention of my successor." He did, however, take two actions which may have been influenced to some extent at least by the letter: the retirement of Dean Hoynes and the decision to rebuild the fire-destroyed Chemistry Hall as a new and much more spacious home for the law school.

Father Cavanaugh's successor in the presidency was the Reverend James A. Burns, appointed in June 1919.<sup>2</sup> Professor Vurpillat lost no time in writing to Father Burns. In a letter dated July 26, 1919, he begins by a reference to his letter of March 11, 1918 to Father Cavanaugh. Then he goes on to say: "Some steps have been taken looking to the much needed reform of the Law School, notably the preparation and equipment of the splendid new law building." Nevertheless, the school was still very disorganized and "no catalogue can be published until it is re-organized and a plan for the future settled upon—what the Law School is to be and what it is to offer. . . . Many whose law education had been interrupted during the war would no doubt return, if they could be told plainly what courses would be offered and what their standing would be." He called attention to the reduction of the faculty to two members and stated that both men had too much to do. He wrote, "I am actually carrying the work that is usually assigned to three regular professors in the leading law schools of the country." Then he continued: "The

re-organization of the Law School along lines of the modern law schools of the country, separating it from the common, everyday routine of the preparatory and common courses of the University, will necessitate change of policy at Notre Dame. At any rate, the Law School faculty must be provided, organized and directed, for at the present there is no faculty, no authorized head, and no system, methods or rules known to anybody." This brought him to his closing point, his own ambition to be named dean: "In this connection may I not state frankly my ambition and aspiration to be taken into the confidence of the University, proclaimed Dean of the Law School, assured an annual income for my services year after year for directing to the approval of the University a large modern Law School as well as teaching therein as at present."<sup>3</sup> Father Burns could find nothing to fault in Professor Vurpillat's ideas and ideals, and he appointed him dean of law sometime before the opening of the 1919-1920 school year.

Francis J. Vurpillat was born at Winamac, Indiana, in 1871. In June of 1891 he received his degree of bachelor of laws from Notre Dame.<sup>4</sup> On graduation he opened a law practice in his hometown and five years later was elected prosecuting attorney of Pulaski County on the Democratic ticket. He held this office until 1902. In 1908 he was again elected to public office and served as circuit judge of Pulaski and Starke counties until 1914. At the time of his election he was the youngest circuit judge in the State of Indiana; when he left the bench the Starke County *Democrat*



paid him this tribute: "His record on the bench in this county during the past six years is . . . , we are pleased to [note], a credit to himself and to the people he served so well. The *Democrat* takes an honest pride in Judge Vurpillat's record. . . ." <sup>5</sup> He joined the law faculty of Notre Dame in 1915, and in 1919 was appointed dean, which position he held until the end of the 1922-1923 school year. He then went to Chicago as assistant corporation counsel to the city. He retained this post until 1933 when he was named attorney for the Federal Works Administration. In ill health, he retired in 1935 and returned to South Bend, where he made his home until his death on October 26, 1951. <sup>6</sup>

In the *University Bulletin* for 1920-1921 (p. 280), announcement was made that "with the school year 1919-1920 the College of Law began a new era, when a new and well-equipped building was provided for the exclusive use of the students of Law." This was no empty boast because the new building, the Hoynes College of Law, not only solved the serious problem of space but also stimulated the students in their application to study and gave them a greater sense of identity and independence. Thus one of them, writing in the first issue of the *Notre Dame Law Reporter* on the changes which had been initiated at the beginning of the 1919-1920 school year, asserted, "The scribes may recount the various forward steps that have been taken, but it were almost impossible to describe the new spirit that pervades the department, a spirit of proud contentment and achievement that is, it may be said, an

inevitable accompaniment of the advance in legal paraphernalia and environment.”<sup>7</sup>

The advent of a new dean was also reason for the sanguine announcement that the law school had entered upon a new era. The building had met one of the severe criticisms of the law situation which Professor Vurpillat had made in 1918, and as dean he moved to remedy other deficiencies to which he had called attention both in his letter to Father Cavanaugh and in his letter to Father Burns. Lack of supervision of classes and of leadership in co-ordinating the work of the faculty toward a coherent law course ranked high among these deficiencies. Hence the current *University Bulletin* stated: “The course is conducted under the careful supervision of the dean of the College to the end that the best methods may be applied and the highest degree of efficiency attained in the teaching department. . . .”<sup>8</sup>

Whether a higher quality student was admitted to the law school in the Vurpillat era is anybody's guess; it is certain that he did not get separate consideration for these students in regard to the grading system, regulations governing graduation, et cetera. Requirement for admission to law remained the same as it had been since 1917. In the *University Bulletin* for that year we read:

Beginning in 1917 the Law Course will be a four year course. Students who have a bachelor's degree or who have completed at least one year of college can complete the Law Course in three years. Graduation from a four year high school or preparatory school of recognized standing, evidenced by certificate from such

school, will admit one to the freshman class of the College of Law as a candidate for the degree of Bachelor of Laws. In the absence of such certificate, proof of established credits, a satisfactory examination based on the schedule of studies for entrance into the various colleges of the University is required.<sup>9</sup>

This tantalizing scope of the admission requirement had been characteristic for many years before 1917 and would remain so for some years after; every eventuality was covered lest some worthy but less educated applicant should be turned away. The student body increased rapidly and by 1922 reached nearly two hundred and fifty, larger than it had been before World War I.<sup>10</sup>

Like the admission requirement, the methods of instruction underwent no change under the new dean. They were based on the use of cases but care was taken to point out that "Excellent as the case method is for imparting a knowledge of the particular principles of the law applicable in the cases analyzed, a general idea of the law as a whole, its main features and universal concepts cannot be learned without the aid of the text-book. Therefore, the law is taught here by text-book assignments as well as cases, both explained and illustrated by the classroom talks of the instructors."<sup>11</sup> This statement was repeated for several years both before and after 1919-1920.

In his letter to Father Burns, Professor Vurpillat had written that a new *University Bulletin* could not be published until decision was made on what courses were to be offered the students. This implied that no

specified schedule of courses had been announced in the immediately preceding *Bulletins*, but such schedules had been announced. In addition to the courses specified for each year of the three-year program, a special detailed notice was given on an Introduction to the Study of Law. This notice first appeared for 1917-1918. What is strange, in view of Vurpillat's letter, is that in the *University Bulletin* for 1919-1920 this notice is printed, but the schedule of specified courses is not given.<sup>12</sup> Explanation of this may be that Dean Vurpillat was not satisfied with the courses being offered and so omitted the schedule until he could revise it; a new program appeared the next year as follows: Sophomore Year: year courses in Contracts, Personal and Real Property, and Pleading, and semester courses in Torts, Sales, Criminal Law, Agency, Persons and Domestic Relations, and Criminal Practice Court. Junior Year: year courses in Property, Evidence, and Pleadings, and semester courses in Wills, Bills and Notes, Insurance, Damages, Quasi-Contracts, Briefing, Equity, Partnership, Suretyship, Mortgages, Trusts, and Notre Dame Circuit Court. Senior Year: year courses in Constitutional Law, Notre Dame Circuit Court, Supreme Court of Notre Dame and semester courses in Private Corporations, Administrative Law and Public Officers, Bankruptcy, Admiralty, International Law, The Conflict of Laws, Legal Ethics, Banks and Banking, Federal Income Tax, Water Rights and Mining Law.<sup>13</sup> It is not surprising that several of these courses carried only one semester hour of credit; this multiplicity of courses will be expanded upon later. To be

noted here is the inclusion of Criminal Practice Court, Notre Dame Circuit Court and Supreme Court of Notre Dame in the schedule of courses. This was to give evidence that the charge brought against American law schools that they were failing to prepare students for the practice of law did not apply to the Notre Dame Law School.

In his letter of July 26, 1919 to Father Burns, Professor Vurpillat had written that the law faculty was reduced to two full-time members, who had far too much to do, and observed, "I am actually carrying the work that is usually assigned to three regular professors in the leading law schools of the country." Although this was a particularly sad state of affairs, it must be admitted that the law faculty was chronically understaffed and the members greatly overburdened. The wonder is that over the years it turned out the high-quality graduates it did. One of Dean Vurpillat's first tasks, therefore, was to rebuild the faculty. Judging from the records, he was able to recruit only one man, James P. Costello, for 1919-1920 and a second man, Edwin A. Frederickson, the following year. In 1921, however, he was more successful, and six full-time and three part-time faculty members are listed.<sup>14</sup> But it would still be a good many years before the law school would be properly staffed.

From Francis Vurpillat's letters to Fathers Cavanaugh and Burns in 1918 and 1919 respectively, before his appointment as dean, it is manifest that he rightly saw weaknesses or deficiencies in the law school, and there is evidence that as dean he tried to improve the

prevailing conditions. However, most of his efforts failed and for reasons left unrecorded he was dismissed from office by Father Burns' successor in the presidency, Father Matthew Walsh, in July 1923.

The letter of Father Walsh in which he informed Dean Vurpillat of his dismissal is missing and we can only infer its contents from Vurpillat's reply: "The shock of the information that your Advisory Council has decided to depose and dismiss me has not abated." That he had not been told the reasons for the decision is plain from his attempt to conjecture what they could be. The possible reasons he thought were two, a controversy he had had with a faculty member, Professor Daniel Waters, and the displeasure of the Committee on Graduate Studies which he had incurred.<sup>15</sup>

The dispute with Waters arose over the latter's having barred from his class and from examinations two students without first consulting the dean, who contended that the teacher had overstepped his authority and insisted that the students be reinstated. The controversy must have become bitter, and the matter was referred to Father Walsh. This can be inferred from a letter sent the president by a Mr. Frank McDermitt, secretary of the Student Law Club." . . . Therefore we wish to be recorded as supporting to the fullest extent Judge Vurpillat in his present difficulty. It is our belief that he has been severely hampered in recent years by a lack of co-operation and confidence on the part of the University and the University Administration."<sup>16</sup>

In regard to the displeasure of the Committee on Graduate Studies, if it existed and was not merely pre-

sumed, it grew out of Dean Vurpillat's persistent efforts to have the University confer on him the degree of master of laws. He first broached this subject to Father Burns in a letter written a year after his appointment as dean, and he pushed the matter during the next year and a half. In his first letter he gave as reasons for his request his legal career, professional and public, over a period of thirty years, his attainments in the judiciary and his position as Dean of Law. He disclaimed personal ambition as his motivation and asked, "Would it not add prestige to the Law School and a more impressive appearance to the law bulletin if the dean were a master and not a mere bachelor of laws? And would it not be consistent with the contemplated [*sic*] course for the master's degree that the dean himself be a master?"<sup>17</sup>

This request was apparently referred to the committee on graduate studies, which rejected it. This rejection of his request must have been communicated to Dean Vurpillat, but the letter is missing, as may also be other correspondence. In any case, the next extant letter dates from more than a year later. In this letter Vurpillat appealed to Father Burns to reconsider the negative action that had been taken on his request.<sup>18</sup> This appeal was in turn denied, and he then took the rather drastic step of appealing to the board of trustees over the heads of both the committee and the president.<sup>19</sup> When this appeal failed, the unhappy dean apparently reconciled himself to a lost cause.

It is hardly probable that the reasons conjectured by Dean Vurpillat for his dismissal were the determining causes of the decision the university had reached in his

regard, although they could have been part of a pattern of events which gradually led to dissatisfaction with his performance. In turn this dissatisfaction could have been the basis for the lack of confidence in the dean on the part of the university authorities, the lack of confidence sensed by the students in the Law Club and expressed in the resolution they sent to Father Walsh.

But whatever the reasons for Francis Vurpillat's being relieved of the office of dean and severed from the law faculty, the ending of this era in the history of the law school was hapless, even though the blow was softened by the university publicly accepting the dean's formal resignation.

## NOTES

1. Francis J. Vurpillat to John W. Cavanaugh, C.S.C., March 11, 1918. UNDA, Vurpillat Papers.
2. Reverend James A. Burns, ninth president of Notre Dame, was the first university educated president. He held the doctor's degree in education. His short term of three years was among the most significant in the history of the university. He effected many important changes, one of which marked a turning point for the future of the school, the change from a high school-college institution to a college-university institution, the beginning of the "greater Notre Dame." Cf. Thomas T. McAvoy, C.S.C. "Notre Dame, 1919-1922; The Burns Revolution," *Review of Politics*, XXV, No. 4 (October, 1963), 431-450; Philip S. Moore, C.S.C., *Academic Development, University of Notre Dame: Past, Present and Future*. Mimeograph, 1960, 13-16.



3. Vurpillat to Burns, July 26, 1919. UNDA, Vurpillat Papers.
4. *Annual Catalogue* (1890-91), 102.
5. Cited by the *Scholastic*, XLVIII (1914-1915), 188.
6. *South Bend Tribune*, October 26, 1951.
7. *Notre Dame Law Reporter*, I, 1 (April, 1920), 57.
8. *University Bulletin* (1919-20), 147.
9. *Ibid.* (1917-18), 132-133; cf. also *ibid.* (1919-20), 151-52.
10. James A. Burns to Harry L. Thompson, May 21, 1922. UNDA, Vurpillat Papers.
11. *University Bulletin* (1919-20), 147.
12. This Introduction to the Study of Law was so comprehensive that it seems of interest to cite the content of this "course of preliminary lectures," which covered "The nature of law; law as it affects the individual; organized society and nations; the common law and equity systems, their origin, development and relations to the common law; the sources of the law, custom, judicial decisions and legislation; judicial systems and the processes of the courts, higher court decisions as precedents and the reporter system; the law divided into two great branches, the substantive law and the law of procedures—rights and remedies—and these laws again divided respectively into the law of contracts, wrongs, property and practice, pleading and evidence, these in turn divided into the special branches of the prescribed course; where to find the law; how to study the law." *University Bulletin* (1919-20), 148.
13. *Ibid.* (1920-21), 291-292.
14. In addition to Dean Vurpillat these members were Gallitzan Farabaugh, Edwin A. Frederickson, Arthur Hunter, John Tiernan and Daniel Waters, full-time; Stanislas Woywood, O.F.M., Vitus G. Jones and Samuel Parker, part-time.

15. Vurpillat to Walsh, July 8, 1923. UNDA, Vurpillat Papers.
16. McDermitt to Walsh, March 2, 1923. UNDA, Vurpillat Papers.
17. Vurpillat to Burns, July 20, 1920. UNDA, Vurpillat Papers.
18. Vurpillat to Burns, September 21, 1921. UNDA, Vurpillat Papers.
19. The record of this appeal to the trustees is in a letter of Vurpillat to Rev. William Cunningham, Chairman of the Committee on Graduate Studies, January 24, 1922. UNDA, Vurpillat Papers.