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Requirements of a Legal Education

Bradley M. Thompson

University of Michigan Law School

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REQUIREMENTS OF A LEGAL EDUCATION.*

The sentiment which has been assigned to me and to which, in a Pickwickian sense, I am to respond, covers the whole field of a lawyer's professional education. It is a subject of special interest to the bar, and of much importance, indeed, to all, for the bar furnishes from its ranks all the members of the judicial department, one of the three co-ordinate departments of the government, whether state or national. And since every member of the bar is a member of the court before whom he practices, we constitute, at least, one third of the government. And if we say it, who ought not to, our third is both clean and respectable.

The members of our profession are not excluded from the executive and legislative departments of the government and they are found doing missionary work in them occasionally, or, perhaps, frequently, the adverb you use depending upon whether you are looking after a rural constituent, or the rural constituent is looking after you.

And I think we have a right to boast that in those departments, the lawyer is both a bright and a clean fellow, and that the odor of none of the great scandals, that have so disgusted the nation, clings to his garments. The senate is sometimes spoken of as a rich man's club, but no lawyer in that body, or elsewhere, was ever accused of being a multi-millionaire. The most serious recent charge, in the eye of the public, made against a lawyer, is that he can take a little darkie of a trust and so conceal him in an ordinary legal wood-pile, that in court and out of court the combination is just a pile of legal wood—plus an odor, distinct but illusive.

In considering the character of the professional education which should

* The following address was delivered, in response to the toast, Requirements of a Legal Education, by Professor B. M. Thompson, February 4, 1901, at the banquet given at the Russel House, Detroit, under the auspices of the Michigan Bar Association, in celebration of John Marshall Day.

be given a young man desiring to be called to the bar, we must consider the wants of our profession. The need of today was the need of yesterday and the day before, and will be the need of tomorrow and the day after, that of learned, intelligent, and independent leadership. Such leadership as Lord Mansfield gave to the bar of England, Chief Justice Marshall to the bar of America, and the big four of our Supreme Court to the bar of Michigan. It is not a need peculiar to our profession, but it is felt by all the professions, and by every business, trade and occupation the world over. All that the race has accomplished in the past is due to leadership. China has been without leadership for 2,000 years and today her national weapons are the bow and arrow, and the battle-ax. Anglo-Saxon has had a leader, now great, now little, in every generation for a thousand years. He has today the breech-loading rifled canon, smokeless powder and the gunner, the gun and the man behind the gun, those forces that make for power and for progress, and power and progress, rightly used and properly directed, make for righteousness, for liberty and for civilization.

What manner of education will give this intelligent, independent, and fearless leadership? In the first place, no manner of education will make a leader out of any one not called to lead. You cannot make a silk purse out of a sow's ear or a lawyer out of a nincompoop. You may, by means of the galvanic battery, make a dead frog kick, but it is a mistake to experiment in a professional school, perhaps in any school, upon mental death and stupidity with any kind of a mental galvanic battery. Of course it is possible, in mathematics for instance, with an assistant holding each arm, to push and pull a simpleton over the *pons asinorum*, but the game is not worth the candle. It matters not to the simpleton, nor to the world, at which end of the bridge he sits down to rest, forever more. I do not mean to say that your effort and trouble has necessarily harmed the fool, or that it is of much consequence if it has. But since public instruction to large classes must necessarily be uniform, you do infinite mischief by that system to the lad who is mentally strong, vigorous and alert, who needs neither pushing or pulling, who will follow if you whistle. When he comes in sight of that bridge, his blood tingles in every vein. Give him room and over he goes with a leap and a bound to his infinite delight and, to the permanent betterment of the world hereafter.

The curriculum of study for a professional school should be selected and the method of instruction should be adopted with the sole view of educating those capable of receiving instruction and who are ready, willing and anxious to obtain instruction, and to shut out all others. It is individual, independent, and pains-taking study and investigation which makes the lawyer, and no one unable to do that kind of work willingly and cheerfully should be encouraged, much less coaxed, to enter the profession. The successful teacher is not he who imparts legal knowledge, and baptizes the class in a pool of learning, but he who imparts such a thirst for knowledge that the student is

compelled to seek until he finds the springs of knowledge wherein he may drink of the sweet waters of legal lore.

The first requisite of all professional education is that it shall be self-education. No other education of any description indeed, is worthy the name. The self-educated man, whether from the University, the common school, or the work shop, is the only educated man. He is self-made, and although sometimes shockingly constructed, he alone is really made at all, educationally. Every other educated man has simply a veneer of learning which his teacher has more or less kilfully glued to his natural ignorance, cramming him, and padding him out here and there. Such men are Quaker guns. They only appear real at a distance. They hold together pretty well if the current of events flows smoothly and the temperature of the times is even, but when it comes to shooting the rapids of life or when the times are a trifle hot or a trifle cold, too wet or too dry, the glue fails and there is saw-dust and confusion.

Attention must be given not only to the method of study, but also to what the student shall study. The graduate on leaving the law school is at best only a lawyer potentially. He has been taken up into a high mountain, (and you will not consider this figure of speech as showing intentionally any disrespect to Satan), and he has been shown all the kingdoms of the law, which he may rule over if he will only conquer and subdue them. The knowledge which he has acquired is to enable him to make such conquests. It should therefore prepare him to take his place in the ranks of his profession and use with skill and effect the weapons of his calling. In other words, the student should receive instruction not only in substantive but in adjective law. He should not only know theoretically what are the essential parts of every legal document, but he should be able to draft those documents. He should be thoroughly instructed in the theory of pleading and practice and also have practical work in that most difficult art.

I believe it is not possible to obtain a critical knowledge of substantive law until its principles can be applied to a concrete case. The student, for example, has not mastered that portion of the criminal law defining burglary, no matter how glibly or how accurately he may be able to repeat the definitions found in the books, until he is able to draw an indictment charging that offense clearly and distinctly, that is, properly.

The law department of the University has from the first given some attention to adjective law, to pleading and practice, but during the past few years, special attention has been given that subject. We now have two professors who devote their entire time to that branch of the law, one to pleading and practice and the actual trial of causes; the other to office work, to drafting every description of legal papers from a receipt to the incorporation of a trust. It is intended that the student shall not only be able to define a deed conveying land, and to point out the distinction between a covenant and a con-

dition or a limitation, but that he shall be able to draw a deed, containing any given covenant, condition or limitation. You will agree with me, I think, that such practical instruction is desirable and that there is little danger of overdoing the matter.

The law department, was at the beginning, fortunate in having Judges Cooley, Campbell and Walker for its first faculty. Their great ability, profound learning, and untiring industry gave the school a character for independent work and enveloped it in an atmosphere of study which it has retained to this day.

We have at the University, a Cooley day and you have here a Campbell day, in commemoration of the great services those two jurists and teachers have rendered the University, the state, and especially our profession. Judge Walker was, in many respects, quite the equal of his associates in that first law faculty. His skill and ability in stating a legal proposition, clearly and tersely, equaled Blackstone's and his manner of putting a proposition was incomparable. You know how much depends upon putting a case clearly and artistically.

I can best illustrate my meaning by an anecdote, which I heard a good bishop relate. Should any of you repeat his, do not fail to give the proper credit. It has the flavor of the pulpit, not of the bar.

Once upon a time, as they say in the fairy tale, there was an Episcopal convention, composed of lay and clerical delegates. A measure was pending which many of the lay delegates were anxious to pass. The rules made it necessary that it should receive a majority vote of both classes of delegates.

Some of the lay delegates, desiring to secure the support of a particular clergyman, the Rev. Mr. S., selected one of their number to call on that gentleman. This lay representative saw Mr. S. and urged him to support the measure, using every argument at his command, but the good man cut the interview short by saying, "Why, if I should support that measure, I should endanger my soul." Of course, that ended the matter and the layman went back to report the result of his interview, and if Judge Walker had heard that report, it would have warmed the cockles of his heart. In answer to the question, "Well what did Mr. S. say?" he replied: "He said, he would be damned if he supported the measure."

Not only did Judge Walker possess that layman's art in putting things, but his instruction was saturated with his own personality, to a remarkable degree. He had argued many of the cases decided by the Supreme Court and he always cited those cases and frequently, by way of comment, and to the delight of the students, would add, "this case was ably and exhaustively briefed by the attorneys. I had the honor to represent the successful party."

Many of you have received instruction in the law department under that first faculty. Their method of instruction may of course be criticised, that is the common lot of every method yet devised, but judging by the result,

the tree by its fruit, their method was wonderfully successful. Their graduates have for years, occupied prominent positions in every bar all over the West. I believe some graduate of that school holds a high judicial position in every state north of the Ohio River from the Allegheny Mountains to the Pacific Ocean, a record unequalled by any other law school in the country.

Since the days of those great men the term of study has been extended from two to three years. We have added to the requirements for admission, doubled the curriculum of study, and we keep a much closer tab upon the work of the individual student than of yore. But the freedom of study given each student, his personal, individual, and independent work, which characterized the school at the beginning, has been retained. I know I voice the wish of every one present when I say the faculty hope to make the law school of the University of Michigan not only a household word, but to make its diploma a mark of honor and renown from Maine to Manila.

Bradley M. Thompson, '58.
