

1906

Law as a Culture Study

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Recommended Citation

Sunderland, Edson R. "Law as a Culture Study." *Mich. L. Rev.* 4 (1906): 179-88.

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MICHIGAN LAW REVIEW

VOL. IV

JANUARY, 1906

No. 3

LAW AS A CULTURE STUDY.

THAT acute observer and commentator on American institutions, James Bryce, in an oft-quoted statement in his *American Commonwealth*, pays a high tribute to the efficiency of American law schools. "I do not know if there is anything," he writes, "in which America has advanced more beyond the mother country than in the provision she makes for legal education." In passing this generous judgment, in which many other eminent Englishmen have concurred, he views our law schools simply as institutions for developing technical proficiency among students destined to fill the ranks of the legal profession. And this is, indeed, the principal purpose for which they came into existence, and the chief end which they serve. Our law schools are in constant and close touch with the bar. The great majority of men upon their teaching staffs are recruited from active practitioners of the law. The American Bar Association, founded and maintained to promote the higher ideals of professional life, keeps watch and ward over the educational standards which they preserve, regarding them as training schools for lawyers. Viewed from this standpoint they are undoubtedly proceeding along sound and sensible lines, and are fitting young men for the bar with a thoroughness which well deserves the praises which have been given them.

But all this assumes that the law is and should be a professional monopoly; that it should be taught solely as a technical training for professional life. Such a view is narrow and false, but not altogether to be wondered at. Lawyers control the law schools, and lawyers look upon the law as belonging exclusively to them. They, only, know and understand the law, and to them it is primarily a great and noble field for professional labors and professional rewards. Those outside its magic portals know not its rich and pre-

cious treasures; those within find no reason to herald abroad a wealth which they deem visible only to the eyes of the initiated. Hence we see the spectacle of our great American universities, splendidly equipped with the means of giving to the youth of the nation instruction in all the wisdom of the earth, closing the doors of their law departments against all except those who come to enter the novitiate for the bar. Why should those thousands of students, who seek at the university an insight into the wonders of human knowledge and experience, a stimulus to vigorous thinking, and a basis for a broad and generous culture, be denied all access to the treasure chambers of the law? I believe that the present system debars the young men and women of this country from a great field of knowledge which is unexcelled as a discipline, of unique and universal practical value, and of surpassing and solid worth as a foundation for culture and character.

The ideal university is a democracy of learning. In the quiet of its secluded shades, the harsh jangle and riot of contemporary strife does not blind the reason nor corrupt the heart. Within its walls, passion and prejudice, and the war of rival interests, give place to calm judgment and a true estimate of values. Its standards are tested in the balances of human history and human nature. All the wealth of knowledge which has come to mankind through the long centuries of struggle for material comforts, intellectual enlightenment, and social self-mastery, is spread before the student with a lavish hand, and he needs but to ask and it is given. Technical education finds a fitting and indeed indispensable place among the activities of such a university. The world must have physicians, lawyers, engineers. Nowhere can such breadth of professional training be given as in the university, where a spirit of wide culture mitigates the tendencies toward professional conceits. But the world needs men more than lawyers, and citizens more than engineers. The members of the professions must necessarily be limited in number. The university, as a factor in modern life, ought chiefly to serve the great army of young people who expect to enter none of the professions, but wish to fit themselves to be intelligent and efficient members of the body politic. Of the *true* university Cardinal Newman spoke when he said: "Its art is the art of social life, and its end is fitness for the world."

If the study of law is a fruitful study, why should it be denied to the non-professional student? For no reason, I conceive, but academic conservatism and the accident of professional control. The first great law school was that of Bologna, which arose during the marvelous awakening of dormant Italy which we call the renaissance. Before the time of Irnerius, as Rashdall tells us in his learned

work on the History of Medieval Universities, there was, in the universities of Italy, a "complete amalgamation of Law-studies with the ordinary educational curriculum." But with Irnerius came a change. Legal education began to possess a distinct political and commercial value, and the doctors of Bologna, proud of their superiority, withdrew their support from the schools of liberal arts. The fame of the Law School of Bologna spread throughout Europe, it became a model for schools beyond the Alps, and thenceforth the isolation of law from the humanities remained a characteristic feature of the continental university system.

In England a still wider separation took place between law and the arts, for while the Civil Law did obtain a place in the universities, the Common Law, which was the law of the land, did not. It is possible that the mere fact of professional interest and professional jealousy respecting the Common Law might itself have operated, as it did on the continent, to isolate the law faculties from the academic faculties, but Sir William Blackstone suggests another and more potent influence, which drove the Common Law out of the universities altogether. This was the conflict between the popish clergy and the nobility and laity. The former, dominated by a foreign primate, became enthusiastic disciples of the Civil or Roman Law, while the latter were equally devoted to the immemorial and cherished traditions of the Common Law. The clergy obtained control of the universities, and the other party was forced to withdraw to a separate place. Thus the Inns of Court and Chancery arose, just outside London, near where the Courts of Westminster were held, for the preservation of learning in the Common Law, and here exercises were had, lectures given, and degrees conferred.

It is noticeable that neither in England nor on the continent, did law and the liberal arts part company by reason of any inherent incompatibility. The question of the value of law as a department of general education seems never to have been raised by the academicians or lawyers of medieval Europe. Accident separated them, tradition perpetuated the division, and the American universities still preserve the system introduced by Irnerius of Bologna.

The law, which has thus been banished and remains an exile from the colleges of liberal arts, is nothing less than the groundwork of society and social institutions. It is the crystallized essence of accepted social customs and morals. As men have struggled upward from barbarism to civilization, their steps have been marked by the progress of their laws. Only so far as new ideals, new conceptions, and new standards of right and wrong, became permanently established and widely approved, did they assume the form of legal precepts. Each moral and social advance

begins with individual reformers, then becomes a popular issue, and receives the final stamp of authority when it takes its place as a part of the law of the land. The laws of a people are thus a register of their moral and social growth, more reliable and more illuminating than their literature or their political history. Law and society are in a sense correlative terms. Society creates the law, but no less does the law create society, by supplying that element of unity and organization which distinguishes it from a mere aggregation of individuals. The history of the law is the history of social effort; the status of the law marks the prevailing level of social conditions. If one would understand the development of human society, or wisely estimate the trend of contemporary social movements, he must be able to unlock the secrets of the law.

Roman Law, strange to say, finds a more general welcome among the culture courses of our universities than does the Common Law of England and America; notwithstanding the fact that it is fully as technical, of vastly less practical value, and barren of that living spirit which touches a familiar chord in the heart of the Anglo-Saxon. The Common Law is bone of our bone, and flesh of our flesh. The Roman Law is the product of an alien race. The traditions of our people, the form of our institutions, and the priceless blessings of liberty which we enjoy, have all been nurtured in the cradle of the Common Law. What claim can the Institutes of Justinian have upon the attention of our young people, at all comparable with the claims of that legal system under which we live, and into which our forefathers put their constant efforts for a thousand years?

If the art of the university is the art of life, and its end is fitness for the world, no study ought to take higher academic rank than the study of our law. Literature is primarily a product of the æsthetic impulse; science concerns itself with the facts of physical nature; but law is broader and more fundamental than either, for it is human reason applied to the various phases of society itself. Economics is closely allied to law, but it is far narrower, in that it is confined to but one form of social activity, the industrial. As for sociology, it is difficult to say what it is. Some writers make it so comprehensive that it includes everything having a social aspect, from religion down. But generally speaking, it seems to confine itself to the ethical side of personal relations. History is less a subject-matter than a method; and the same is perhaps true of philosophy. To exclude law, therefore, from the hierarchy of the humanities is to take the keystone from the arch.

It is a curious and somewhat remarkable fact, that the famous Commentaries of Sir William Blackstone upon English Law, and

the scarcely less well-known and meritorious Commentaries of Chancellor Kent upon American Law, were both delivered in the form of lectures to *academic* students, the former at Oxford, the latter at Columbia. Blackstone, in justifying the presentation to Oxford undergraduates, of a survey of the law of England, said: "That a science which distinguishes the criterions of right and wrong; which teaches to establish the one, and prevent, punish or redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart; a science, which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community; that a science like this should ever have been deemed unnecessary to be studied in a university, is matter of astonishment and concern. Surely, if it were not before an object of academical knowledge, it was high time to make it one; and to those who can doubt the propriety of its reception among us (if any such there be), we may return an answer in their own way, that ethics are confessedly a branch of academical learning; and Aristotle *himself has said*, speaking of the laws of his own country, that jurisprudence, or the knowledge of those laws, is the principal and most perfect branch of ethics." Is it not a subject for regret that this plea of Blackstone has not been heeded, and his example followed by the general introduction of law into academic curriculums, as being quite as important as literature, languages, or history?

Even more important than the knowledge one acquires at college is the discipline it affords. The facts learned will be largely forgotten, but the mental development of college years is a permanent asset, which the student will carry with him through life. It is the disciplinary value of mathematics which has caused it to be so highly esteemed as a branch of the liberal arts. Mathematics is, indeed, the perfection of logic, and its value cannot be questioned. Its limitation, however, is that it is wholly an abstract science. Space, time and number, as pure abstractions, are its basic concepts. There are no contingencies in mathematics. There are no relative degrees of certainty, no multitude of more or less influential tendencies, the resultant of which must be determined. It deals in absolute certainties. It is an exact science—the only exact science—because it can wholly eliminate all disturbing factors. Its problems are, therefore, logically simple ones, its difficulties being in method rather than subject matter. If a suitable method be used the correct result must follow necessarily and invariably.

The moment concrete elements enter, the certainty disappears. Thus, physics, which applies mathematics to the actual phenomena of nature, is capable only of approximations, because the multitude

of elements which influence the result, can neither be wholly eliminated nor determined with absolute accuracy. In the biological sciences this difficulty is still more marked. All the influences which combine to produce a given result, cannot possibly be even identified, much less can their comparative importance be exactly computed. Experiments can never be repeated under *exactly* the same conditions, because the sum total of determining factors can never be known. The problems of the biologist, who gropes about in an almost inextricable tangle of tendencies, are therefore vastly more complex, intrinsically, than the problems of the mathematician. When, however, we reach the domain of human experience, and try to formulate rules of human conduct, we find the most complicated field of all. The impulses and motives of men are as countless as the sands of the sea. Every person stands in a more or less intimate relation to his family, his neighbors, his friends, his business associates, his church, his party, his city, his state. His conduct is directed by considerations of love and hate, generosity, avarice, ambition. He moves in a society made up of men, women, children, friends, husbands, wives, laborers, idlers, the rich, the poor, politicians, farmers, merchants, corporations, teachers, public officers. He is influenced by the people he meets, the books he reads, the religion he professes, the work he does, the places he visits, the misfortunes he suffers, and the pleasures he enjoys. Out of the midst of such a myriad of shifting, uncertain, and unknown conditions, where no two persons are ever subject to the same forces, and no two situations are ever alike, the law endeavors to bring order and system. And order and system it has brought, but only through the toil and trial of centuries.

A field so vast and so intricate, whose problems are so closely interwoven and inter-related that an adequate handling of one implies familiarity with the principles underlying all, is a field rich in possibilities for mental culture. The technical features are incidental, not substantial. Beneath them always appears the broad practical question, What legal principles are applicable to the facts of the given situation? To take the facts in a given case, study them in their relation to the various principles of law which seem to bear upon them, segregate the material and relevant facts from those which are irrelevant, weigh the former and judge of their comparative importance, apply to this sifted and co-ordinated group of facts appropriate and correct legal principles, and present the whole case in logical and well-reasoned completeness, is a task which calls for a high order of mental effort. Ability to do this rapidly, vigorously, and accurately, is evidence of a power which can deal with the problems of social, political, and commercial life without fear

of failure. The leaders of men are those with an unerring sense of relative values, who can see at once the vital points amid a multitude of confusing details, and who can readily apply to the situation thus analyzed a sensible and effective course of action. If lawyers, more frequently than others, have been such leaders, it is in no small measure due to the magnificent training which the law has given them.

Every case which the student reads and studies is an example and a lesson in meeting conditions and analyzing practical situations. The facts out of which the case arose are given. They are just such facts as, in intricate and diverse forms, meet us all, in perplexing confusion, in our various walks of life. What do they really mean? Which were the fatal steps which the parties took, and which were harmless? How might the difficulties have been avoided? What are the consequences of what was done? No more beautiful demonstration of the power of a well-furnished and alert mind to unravel the tangled problems of practical life, can be conceived, than the opinion in such a case if written by an able judge. The opinions of Lord Mansfield and Lord Kenyon, of Chief Justice Marshall, Justice Miller and Justice Field, of Chief Justice Shaw of Massachusetts, of Judge Cooley of Michigan, and of scores of other judges whose commanding abilities and untiring labors have been nobly dedicated to the cause of justice, exhibit a vigor in marshalling facts and a breadth and accuracy in applying principles of law, that make them eminently worthy of a careful study by any one who would fit himself for a successful and effective career, whether in law or elsewhere.

Our universities present a curious composite of reason, precedent, and accident, in the curriculum which they offer to the seeker after general culture. Take the instance of Harvard University, our largest and best. To entitle the student to the A.B. degree, sixteen courses, aside from some prescribed work in English, must be completed and these courses are practically all elective. The student may take just such courses as he may choose from the announced list, subject only to a contingent language requirement. And what does this list include? Enough courses in the various subjects so that the student, should he care to do so, might study nothing but chemistry, nothing but engineering, nothing but mathematics, nothing but the classics, nothing but physics, nothing but a single one of several other branches, and such work would, under the rules, entitle him to the A.B. degree, which is Harvard's certificate that he has received a liberal education. Yet not only is he prohibited from taking his work exclusively or even largely in law, which is far broader in its scope and far more vital in its bearing on life

than any one of the subjects named above, but he cannot take a single hour's work in it as a step toward his degree. It is absolutely denied to him, in whole and in part.

Michigan University, typical of the great state institutions of the West, has practically the same irrational limitation. The undergraduate in the Department of Literature, Science and Arts, may roam at his own sweet will over the fields of Latin, Greek, Sanskrit, Assyrian, Arabic, the romance languages, philology, music, philosophy, mathematics, bacteriology, drawing, chemistry, botany, English, physics, forestry, and even the details of wholesale and retail trade, and all will count toward his A.B. degree; but the law, which has in all ages commanded the homage of the greatest minds, which is the foundation of liberty and the guaranty for the security of property, which holds society together in the bonds of justice and equity,—this, the finest of all culture studies, he may not touch, save only as it may be incidentally involved in the conventional academic branches. A single subject, commercial law, too much condensed and too briefly treated to be more than a tantalization, has crept into the sacred enclosure of the arts, under the protecting shadow of the new courses in commerce and industry. And this is all!

There is, I am aware, a tendency noticeable among the majority of our universities, to combine academic and legal work so as to reduce the time necessary to take both degrees. Thus, at the University of Michigan, a six year combined course is offered, the fourth year of residence being devoted largely to first year law studies, on the completion of which the A.B. degree is conferred, and two years later, if the remainder of the law course is taken, the LL.B. degree follows. At Yale, also, a six year combined course is offered, and Columbia has practically the same plan. A somewhat more liberal arrangement prevails at Cornell and the Universities of Wisconsin and Missouri, where academic juniors and seniors are permitted, under stringent restrictions as to the amount of law work to be carried during any one semester, to pursue law studies and count the same toward the A.B. degree. Stanford and the University of California have gone still further, and allow law courses to be elected during the second, third, and fourth years. Furthermore, in the catalogues of these universities, the department of law appears as a regular department of the academic college, on the same plane as the departments of Greek, German, or mathematics. But the courses which may be elected are closely limited, they embrace, all told, scarcely more than the ordinary first year law studies, and the system, in its general scope, is scarcely more than a variation of the familiar method of shortening, by a year,

the residence required of those who wish to take both the literary and law degrees as a preparation for admission to the bar.

The fatal defect in all these innovations is that they are intended primarily, if not solely, for the benefit of that relatively small body of students who intend to make law their business in life. This professed purpose determines the actual result, and it is, I believe, a comparatively rare occurrence for anyone to elect the offered law courses who does not intend to complete the work for the law degree. Indeed, there seems to be an impression among the students that such a course on their part would be almost an act of bad faith, since the privilege of counting law studies toward the academic degree is deemed to be granted only in consideration of a *bona fide* intention to complete the entire professional curriculum. What is needed is to freely extend the privilege of electing law studies to all those university students who may wish to pursue them for purposes of general culture, instead of limiting it to those who are already predetermined upon a legal career.

Waiving the administrative problems involved, which are certainly far from formidable, no valid reason can be assigned, why law courses, at least in such of our universities as maintain undergraduate law schools, should not be thrown open, with no greater restrictions than are common in the arts courses, to every properly qualified member of the academic department. Nor, indeed, does there seem to be any good reason why, in colleges or universities which do not maintain law schools, chairs of law should not be established and maintained as of quite equal importance with the traditional academic chairs. It is an unwise and narrow policy which compels those who attend a college or university for the purpose of fitting themselves for non-professional life, to forego the manifold and acknowledged benefits of legal study. And so long as admission requirements in our law departments are no higher than in the academic, it can hardly be objected that only academic upper-classmen are qualified to take up what law freshmen are able to master.

Instead of throwing all manner of obstacles in the road of those who wish to learn something of the laws of their country, and to avail themselves of the splendid discipline which the law affords, the election of such studies ought to be made as easy as possible. While the systematic work of fitting young men for the bar should be pursued as vigorously as ever, the equally important work of giving academic students an insight into the rich domain of the law, should be simultaneously carried on. The arts student should feel as much at home in the law courses as in history, economics, or science. There is nothing intrinsically more difficult or more tech-

nical in the elements of contracts, torts, equity, corporations, or even pleading and evidence, than in classic or Hellenistic Greek, differential calculus, or quantitative analysis. When the arbitrary and traditional barriers between law and the humanities have been swept away, and the study of law takes its place as a department of liberal culture, a great step forward will have been taken toward making the university an institution whose art is, in truth, "the art of social life, and whose end is fitness for the world."

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