# THE LAW AND ITS STUDY

*Primitive Source and Development—Remarks Touching Time and Methods Pursued in Studying—Serious Aspect of Library Demands and Book Congestion.*

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A very old theme, though not without features susceptible of presentation in a new light—a light in which they may appear interesting and instructive.

In dealing with it I shall undertake to touch briefly on, first, the primitive source and development of the law; second, the range of study, considering it relatively as a science or an art; third, burdensome library demand and book congestion.

The antiquity of my theme necessarily challenges attention, for it reaches back to the ages of prehistoric twilight. It is reasonably predicable of primitive men that they turned with the inquisitiveness of natural curiosity to the contemplation of the mysterious operations of nature. They observed in the dawn of self-consciousness that the light of day is succeeded by the darkness of night; that vivid lightning and deafening thunder flash and voice the menace of heaven from the scowling storm-clouds; that in the placid calm of a summer day may be hidden the furious elements of a forest leveling hurricane; that dormant and concealed forces of the earth may appear in the eruptive and terrifying aspect of fire and flame, swallowing hills and overturning mountains in the shock and throes of the earthquake, and that in the recurring processions of the seasons come annually the springtime of life, the summer of growth and strength, the autumn of maturity and decay and the winter of gloom and death.

Such and countless other manifestations of the power and activities of nature might well claim in awe and reverence the attention and study of primitive men, as indeed they have claimed even to our own day, in continuing obscurity and mystery, the deep interest of mankind and the persevering investigation of scholarship.

We are sure only of the fact that with their creation began the operation of the laws by which they are governed, or the natural laws.

The incessant operations of these laws, antedating, controlling and directing all other forms of law, were necessarily observed and studied as struggling reason sought the causes of their visible effects. From this point of view it seems obvious that as men sought social welfare in union and protection under law and government they conformed submissively in thought, act and purpose to the inexorable obligations of the organic or natural laws.

And how interesting and instructive to decipher and study even the fragmentary records of the laws enacted by them and their descendants, as found on tablet, monument, pyramid and obelisk!

With some freedom of the imagination we may thus see as plainly as though inscribed on the pages of history the peoples, costumes, manners, habitations and villages of those remote ages. As the archæologist may take the fossilized bone of an animal extinct before the advent of man on the earth, and from it construct a replica of the creature as it appeared in life, so the thoughtful student may summon to the mind's eye the ancient peoples, governments, countries and cities whose fragmentary laws he is investigating and studying.

We may thus, for example, form a mental picture of Babylon in the days of Hammurabi, for his code, now accessible in the main, appeals even to ordinary scholarship.

And next, turning to the Mosaic code, we may conceive a vivid picture of life in Palestine, and especially so when supplemented by succeeding chapters of the Scriptures.

From this famous spot we pass in fancy through the Arabian desert into Egypt, where we discover that the records of history are comparatively numerous and surpass in interest to the antiquariam the scattered fragments of the law. But this fact does not bar the work or lessen the enthusiasm of the diligent scholar, for he acquires in such investigation the power to infer and know conversely what laws would fit and justify the conditions and environments that history describes.

In the progress of events and development of the law the student passes onward from Egypt, with its unique atmosphere of mystery, occultism and religion, to historic and famous Greece, where art, literature, philosophy, oratory and military prowess attained to their acme in ancient times. Though here the storehouse of knowledge be found filled to repletion, yet it is of a miscellaneous nature and does not point to the law as a uniform and well adjusted system, pre-eminent in the affairs of the people.

But nevertheless the laws of Athens and of Greece generally indicate indisputably continued evolution and progress. They conform to the conditions and environments of the time and are in harmony with the comparatively modern spirit of the social status of ancient Greece. They inculcate incidentally the lesson that greater freedom and its blessings attend the pioneer march of men, as they go forth from old despotisms to establish their homes amid new environments.

The next step takes him to the Italian peninsula, with its 1,000 miles of shore line on the Mediterranean Sea—a sea navigated from earliest historic times for commercial or warlike purposes by the Phoenicians, Egyptians, Greeks and others, to whom modern nations are largely indebted for the basic regulations of the maritime laws. Though many towns and tribal assemblages there were in Italy, yet to Rome turns spontaneously the student's attention. It turns inevitably to the wonderful city that became the mistress of the world and gave as never before form, force and expression to the law. As the mind rests in fascinated contemplation on the vast empire that grew from a single city and beholds its immense power, its great wealth, its conquered colonies surrounding the Mediterranean and its domination over all coveted regions of the then known world, it can hardly wonder that the laws enacted for the government of such diverse countries, peoples and conditions became liberalized, adapting themselves to the situation, and remain to this day the basic laws of nearly all civilized lands.

Combining the essential elements of the laws of preceding times, as found in the countries over which Rome held sway, with the original laws deemed suitable to the status of civilization then existing, and representing a vigorous sense of justice, tempered with the refining influence of Greek philosophy, the Roman law forms a system well worthy of our study and admiration. In fact, essential is study in this broad scope to one who would learn and know the law as a profound science rather than as a mere art.

In the second place, coming to a nearer and more practical consideration of the subject, it may broadly be asserted that a beginner in the study of law is prone to regard three years as a protracted and toilsome period to devote uninterruptedly to the cult of jealous Themis. Not unfrequently in this spirit he seems to regard it as indicative of promise in legal astuteness to shirk clandestinely the preparation of lessons and be remiss in class attend-

ance. Shallow the mind and pitiful the practice that lead thus astray. The species of adroitness that resorts to deception and aims to mislead teachers is repugnant to every proper sense of fitness for the law. It is a sure means of creating disgust and contempt for a person in the profession, and cannot sanely be considered an asset of resourcefulness in concealing plans and misleading adversaries in the trial of causes. Reputable members of the profession maintain a high standard of integrity, honor and self-respect in such matters. Their word is as good as a bond in the acknowledgment of that standard, and no temptation could lead them wittingly to indulgence in scurvy tricks and sharp practices. He who would become associated with them cannot realize too early that only a true gentleman is entitled to that distinction. He who would officiate in the temple of justice must aim to personify justice in word and act. The rules of legal ethics must, as it were, be absorbed and grounded in him as the foundation of his ambition. Properly understood, the legal profession represents a type of manhood, courage, honor, generosity and unselfishness unsurpassed in all the world. In this light it may be predicated from the student's point of view that the mind which most readily recognizes and grasps the distinction between right and wrong, leaning irresistibly to the right, gives promise of attaining to the highest possibilities in the domain of law.

But let us turn again to the period of study, now commonly fixed upon as three years. The opinion of impatient fault-finders that it is needlessly long for elementary work in preparing for admission to the Bar is certainly not shared by judges on the Bench and experienced practitioners. To them it seems that even close application to study can hardly lead in that time beyond the threshold of the legal temple. They know that the vestibule is densely crowded, with hardly standing room, and that a majority of those who enter it remain there indefinitely or return to the more inviting atmosphere of ordinary pursuits. They believe that the study of law is a life work, and that the boundaries of legal science, like the horizon, seem to recede as they advance. They observe that even the greatest minds in the profession are often perplexed and sorely taxed by the problems presented for solution. They feel obliged at times to investigate, analyze, compare, reflect, ponder and study precedents and statutes to a degree far exceeding the most unsparing and persevering efforts of

students. So it may be when unsettled and complicated questions or cases of first impression put to the test their professional standing, committing its vindication to the most exacting work. The judges of the highest courts work harder under their burden of responsibility than the aspiring tyros of a law school in coming to an ultimate decision in the cases referred to them for review. And trial judges who come more directly into contact with indifferently equipped neophytes of the Bar complain of the extra work thrown upon them, the attendant loss of time and consequent interference with public business, the actual harm to clients and the loss of prestige to the profession resulting from having such smatterers and pretenders to deal with in court or in chambers. In view of such experience who can blame them for regarding three years of preparation as inadequate to qualify average students for actual practice at the Bar? Such students, it is said, ought to spend a year or two in an office, doing the routine work, before applying for a license to practice.

The third point of view brings more specifically to the attention the methods commonly followed in the study of law. These may briefly be considered under the general designations: Law office, correspondence school, professional school and university law department or law college.

1st. Formerly it was customary to enter a law office and study there for two or three years, performing incidentally the duties of clerk, messenger, collector, and the like.

One might thus learn the law as an art or in the nature of a trade, acquiring a precise knowledge of the local and changeable rules of court, familiarizing himself with the authorities and statutes and how to apply them perfunctorily, developing customary skill in drawing pleadings and joining issue, gaining proficiency in the examination of witnesses and learning how to follow tactfully a case on trial to the verdict, motion for a new trial, judgment, appeal and final execution.

Possibly many years of service would be requisite to enable him to do these things, but even though he could do them, and do them creditably, such test would not entitle him to rank as a profound lawyer.

It has repeatedly been observed that an office student is usually left to his own resources. The busy lawyer in whose office he is, seldom aids him with advice or encouragement. The danger

is thus incurred of forming a narrow or perverted conception of the scope, purpose and aims of the law. Without a wider range of vision it may be viewed as little better than a trade in which one may make a comfortable living on a trifling investment and rank at the same time among the leading citizens of the community, not to mention the attendant likelihood of political prominence and preferment. With a retentive memory he may learn thoroughly the rules of practice and appear more self-possessed in court than the most learned counselor. In fact, his familiarity with the local rules and details often makes him seem the greater lawyer in the eyes of the ordinary spectator.

In exceptional cases, however, he may find himself in the office of a lawyer of transcendent ability and high character. If from such person the aspiring tyro is fortunate enough to receive advice, guidance and encouragement his progress ought to be rapid and substantial, leading possibly to notable success and professional eminence. But so seldom does this happen that the law office has fallen into disfavor as a place of study, though still serviceable, if not indispensable, in qualifying students for the practical and routine work of the profession. But few of them are seriously disposed, possibly due to lack of time, to take up this class of work elsewhere.

2nd. The correspondence system of study is designed to serve and initiate into the law, persons who are employed during the day and cannot afford to give up their positions or leave their homes. They are employed in all sorts of trades and callings and widely scattered as to domicile. The correspondence school is located in some city chosen by the organizers and reaches by mail those who choose to enroll themselves as students and pay the prescribed fees. It matters not in how many States they reside or how remote from the school they may be. For example, such school in Chicago may have students in Oregon, Arizona, Florida, Maine or the Philippines. Instruction is imparted by means of written or printed lists of questions, which are to be read, studied and answered in writing, certain designated text books being used collaterally. The question lists, with the added answers, are then mailed back to the school for review, correction and remarks. There seems to be little or no restriction in regard to the age, sex or educational standing of the correspondents. Needless to state, the system is not in favor with the Bench and Bar, nor is it recognized by any prominent university.

3rd. The professional schools are usually conducted as independent enterprises in the larger cities. They are ordinarily carried on apart from universities, although some of them have a nominal connection with such institutions. They aim at imparting a bare knowledge of the law, as found in the text books or case compilations, with possibly running comments as to pertinent decisions and statutes by the examiners. The sessions of these schools are usually held at night and attended by persons employed during the day. Rush work must usually be done to cover the required amount of reading. Little or no attention is bestowed upon collateral subjects, such as logic, political economy and history. It is a boast of the advocates of the system that it is essentially practical, and it is so to the verge of barrenness. The general educational equipment of the students appears to be ignored, save as to the tests and regulations prescribed by law and examining boards. Some of these schools betray a commercial spirit, regrettable to state, and seem indifferent to the suspicion that their activities tend rather to commercialize or degrade the law than to elevate it to the commanding eminence so eagerly aspired to by all worthy members of the profession. The student thus trained counts primarily for success on his activities and skill in bringing the facts of his case within precedents and statutes known to be assuring of victory. If he be studious and industrious, devoting thought and time to his work, and thus ignoring or treating with indifference the indolent, incompetent or rowdy elements too frequently found in the schools, with accompanying lack of interest and demoralization, he may reasonably hope to pass unscathed through ordinary vicissitudes and finally attain to a creditable degree of efficiency, distinction and honor in the profession.

4th. What may be called the university system, as it seems to me, discloses a much broader domain for emulation, research, enthusiastic work and scholarly achievement. The very atmosphere has a broadening and inspiring influence. It tends to lift the thoughts, aspirations and purposes above the vulgar enticements of avarice.

When a student loves the law and seeks to become profound in it, apart from the thought of popular acclaim and material advancement, he forms necessarily a resolution to study it in its broadest, deepest and noblest aspects. In short, he determines to study and learn it as a science. His investigation follows its

development through the ages. He observes it in the light of history and traces its relations to social conditions. He notes how in the interest of equality and justice its principles assimilate the pertinent attributes of philosophy and religion. His environments encourage and inspire him to look further than lecture, text book or case compilation. He recognizes the fact that all branches of human knowledge are tributary to the law, and that nothing can be learned which may not at some time prove germane to it. Emotions sublime attend upon contemplation of the universality and eternity of its scope, boundless as to space, measureless as to time. Even he ancients referred its origin and source to the wisdom and justice of God. In their respective courses the stars and the planets obey it, even as do the growing tree and the falling leaf, the drop of water and the grain of sand.

Subject to the immutable laws of nature we have our being and suffer death. They apply alike to plant and soil, to men and creatures. We shall learn later to realize the fact and find in the study of any of nature's works a lesson applicable to them all. The law affecting the plant or the animal will be found to extend also to ourselves and affect us relatively in the same manner.

I am not disposed to express preference for any of the several methods of study in vogue, although I do so in respect to place and favor the university. The methods of study may be much alike, whether the place of study be a professional school or a university. They include lectures, text books and case compilations.

The lecture system has, however, become well nigh obsolete in all the schools. The text book has supplanted it in office study. as well as in correspondence and largely in professional schools. In university law curriculums there is a division of sentiment that gives preference to text books in some institutions and to case compilations in others. The line of demonstration between these two means of study has been definitely drawn, and some educators and students have manifested not a little feeling in extolling the alleged merits of the one or the other. Adding a word as peacemaker to the harmless controversy, I would suggest that a judiciously adjusted combination of both would be preferable to either alone. The text book should lead to a clearer knowledge of the law as a whole, exhibiting it not fragmentarily, but as one great system, harmonious and beautiful in its compactness and symmetry. Moreover, it furnishes a means of study more intel-

ligible than case compilations to undergraduates. But to students of more matured years and higher educational equipment the study of cases strongly appeals. It better anticipates and prepares them for actual work at the Bar. It leads to the patient research, careful analysis, logical sequence and close reasoning indispensable to professional efficiency in active practice. For ordinary students, however, the more satisfactory course would be to use the text books primarily and refer to the cases for collateral reading. I refrain from touching on other methods of instruction, which have the sanction of local experience, for it might seem obtrusive to introduce them, in view of their circumscribed application. But an additional word pointing to probably the chief cause of the obsolescence of the lecture system may be apposite. It is that the rules adopted for the examination of students for admission to the Bar in some States require them to have studied text books or case compilations on the designated subjects included in the scope of examination.

4th. A grave question has arisen in regard to library requirements. What with reports, text books, statutes, cyclopedias, digests and publications of various kinds, it takes a fair income to keep an office supplied with them. Even now but comparatively few lawyers can afford to take them all.

The inevitable consequence will be that in the not distant future a movement will be inaugurated in the profession looking to the suppression of this evil. Its advocates will not be slow to emphasize some of the other evils of the book congestion, such as the attendant likelihood of discordant decisions, the increasing difficulties of investigating and ascertaining the law in a given case and the consequent loss of time and labor, not to mention the danger of serious and costly errors. That condition would emphasize the need of reform, and a reform in such case would almost inevitably tend to a more general codification of the laws. The conditions leading to such result would probably involve a material change in trial methods, causing the profession to depend less on "all-four" precedents and more on fundamental principles. It is not the statement of such principles that fills and multiplies the books, but the publication of multitudinous cases, a large percentage of them cumulative or dealing with similar and almost indistinguishable facts. It is the endless repetition of facts, or things declared to be such by jury verdicts, rather than new phases of the law, that proves so burdensome in the way of

expense. The most obvious and feasible plan of meeting the difficulty is to turn submissively to the study and application of the fundamental principles to matters in litigation. A mind well stored with them could on hearing the disputed facts, usually elusive and the chief cause of uncertainty in litigation, state with approximate accuracy what the law in the premises ought to be. When well understood these fundamental principles ought to be almost as serviceable in the domain of law as the alphabet is in reading, writing and expressing thought in words or as the simple numerals of the arithmetic are in solving its problems. With the administration of the law shifted to that basis a person well grounded in its principles might say on beholding a great library of law books, "I know not what opinions were rendered by the court in the cases contained in the great majority of these reports, for I never read or heard of them, and yet I believe that if you give me a true statement of the facts involved in any of them I can tell you off-hand how it was decided."

It seems to me that the student ought primarily to acquire a thorough knowledge of these principles and learn to supplement the illustrative cases in the books with apposite hypothetical ones devised by himself. It seems to me also that future changes in the administration of the law will tend in this direction. A logical, convincing, irrefragable argument based on principle ought to have more weight with the court than an indifferently reasoned case in point, and especially so when it is remembered that the facts of no two cases are hardly ever precisely alike. There is usually some peg of difference between them on which may be hung the hat of doubt.

The chief thing, however, to be kept in view, no matter how we differ in respect to places and methods of study, is to co-operate in elevating the professional standard to the highest attainable plane of learning, efficiency and honor. As a means to this end examinations for admission to the Bar should be made so searching, thorough and unsparing that unscrupulous self-seekers, indolent loafers, moral derelicts and pretentious smatterers would fail to pass. Unyielding strictness in the matter would tend to deter the shyster element and conceited incapables from entering on the study of law. Thus might the profession be freed from an incubus compromising to its cherished claims of learning, efficiency and honor.

The law carries with it a sense of just pride and chivalric manliness. It puts the profession in the van of human affairs and activities and makes these dependent for their very existence on its courageous and impartial enforcement. Without law anarchy would prevail, and in this case men would fall back to their primitive status of barbarism and property cease to be, leaving no field for regulated human affairs and activities. Against such dire calamity law is the last available bulwark. In patriotism, civic virtues, sympathy with distress and valiant championship of right the legal profession necessarily holds a foremost place, and it is the duty of its members to coöperate in protecting it from dishonor and advancing it to the highest grade of such place.

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