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## The Place of Law in the Studies of a University.

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THE larger law schools of the United States, with a single exception, and many of the smaller ones, are organized as departments of universities. The strength of a university is proportioned to the service which each department in it is rendering to the rest. This service is the greatest where the lines between them are not too sharply drawn. The early European university had no such lines at all.

If we seek out the original reason for giving this name of university to certain institutions of learning, we find it in the fact that they were the only form of private corporation which survived the Dark Ages. For the same reason that the governing body in Harvard College in the Colony of Massachusetts Bay, and in Yale College in the Colony of Connecticut, were each, for a century or more, commonly spoken of as "the corporation," as being the only important corporation in existence in these colonies, except those of a public character, did "universitas," after the revival of learning, become the descriptive term for

Bologna and Paris and Oxford. To such gatherings of scholars only was the law willing to accord that attribute of artificial personality which Rome had found, when held by private individuals, to be a danger to the State. It might be a gathering of scholars devoted to a single study or group of studies—what we should now call a Divinity School, a Law School, or a College of the Liberal Arts.

The name, however, has for many centuries come to mean much more. The modern university is but one of thousands of corporations, each equally a juridical person, gifted with the power of collective ownership and perpetual existence. What now gives it a place apart from all the rest is that it professes or aims to be a seat of universal learning (*studium generale*), where all may resort for aid and direction in pursuing any branch of art or science,<sup>1</sup> and pursuing it, in theory, at least, to the farth-

<sup>1</sup> Minshaeus, as early as 1627, in his "Guide into the Tongues," titles "Universitie" and "Academie, High Schools, or Vniversitie," defines the vulgar sense of university "in common speech" as being a place "*universis scientiis et hominibus destinatus.*"

est bound to which human knowledge has yet attained.

A university is an historic growth. If it be but the creation of yesterday, it comes into existence stamped with a character determined by the circumstances that gave it birth. If it has lived long, that original stamp has been deeply affected by its environment, and still more by the inspiring touch of whoever have been the master spirits in its boards of government and instruction. In the manner in which the various branches of art and science will be taught, in the fullness of treatment given to each, in the arrangement of courses and departments, in the meaning of degrees conferred, each university will be a product of evolution individual in character. But the ideal of each must be the same.

What now is this ideal for an American university in respect to law?

That law should be made, at some stage and in some manner, the subject of systematic and thorough instruction, we may assume. But should it be taught to all? Should it be taught in connection with other studies or by itself? Should it be taught as a science only, or as an art as well?

1. Should law be taught to all who enter the university?

The American university, as it exists to-day, is the fruit of an endeavor to combine the distinctive features of the English and the German university. It has its college of the liberal arts, receiving its students from the high school or academy at about the same age at which Eton and Harrow send theirs to Oxford or Cambridge. In this college they are kept for three or four years; at first, in most of them, set to studies required by their masters, and then wholly or largely to such as they may select themselves.

Their preliminary education has had a somewhat wider range than that fur-

nished by the English public school. The American high school has been not unfairly called "the People's College." It teaches its boys less of Latin and Greek than does the English public school; but, on the other hand, they can read fairly well some foreign language now in use, and have learned a little of almost every branch of human knowledge.

A year or two at college extends their acquaintance with the classics, history, and mathematics, and adds logic, rhetoric, and astronomy, or their full equivalents.

Both the *trivium* and the *quadrivium* of the ancients are thus completed (for music is a high school study), and one of the three philosophies which next became a part of the recognized humanities<sup>2</sup>—history—they have read extensively, if not profoundly. At this period they can, and, in my judgment, at this period they first can, with safety, be left to select within certain limits their future line or lines of study. They are now certainly fully abreast of the graduate of the German gymnasium,<sup>3</sup> and ahead of the graduate of the French *lycée*.<sup>4</sup>

Should any acquaintance with law and government have been forced upon them at an earlier stage?

On the one hand, the American needs to know something of it more than those of any other nationality, because his whole life is to be spent in closer contact

<sup>2</sup> Moral philosophy, metaphysics, and history. Malden, Origin of Universities, 119.

<sup>3</sup> At Oxford University, by a recent vote of the governing body (the "Congregation"), graduates from gymnasiums of Germany, Austro-Hungary, or Switzerland, on presentation of their Zeugnis (or certificate of graduation, given on passing the abiturienten examination) are exempted from taking the first pass examination (the "responsions," commonly known as the "smalls") for the degree of Bachelor of Arts. It will be recollected that there is no entrance examination at Oxford. The responsions occur at the close of the first year.

<sup>4</sup> He is brought to about the point at which American students leave the high school to enter college. H. Hauser, *L'Enseignement des Science Sociales*, 303.

with it. His vote counts for more. He is more likely to be called upon to apply it, as a juror; to make it, as a member of a municipal corporation or legislative assembly.

On the other hand, because it comes of itself closer to him, it is the less necessary that he should make it a special study in his youth. Every newspaper that he reads is a teacher of civics. Every State election offers him a free lecture course.

It would seem to me that the ordinary college student can safely be left to learn in this field for himself, unless, on reaching an age proper for the self-selection of his future studies, he chooses law and legislation among them of his own free will.

Shall they, then, be thrown open to him as part of the work offered in the later years of his college life? Surely to this there can be but one answer. The university college must stand ready to teach what are the foundations of social order. It cannot stand aloof from any science, and least of all from that which in human history is the first to be developed, and the development of which marks the line between the state of simple savagery and the beginnings of civilization.

Such a college need not require the study of human law from those who enter it. Offer it to them, or to such of them as ask for it, it must.

Some instruction in a subject so close to every man's life and duty is called for in the poorest and weakest college in the land. As the university college has, from its environment, greater means for doing this work well, its responsibility is the greater also.

2. But should law be taught in connection with other studies or by itself?

This must depend much on the career for which each man is seeking to prepare

himself, and the time within which he wishes to complete that preparation.

If it is not to be the career of a lawyer, then let his legal studies be subordinated to others bearing directly upon the life he has in view. They should not, in such case, constitute his main work.

If he is to make law his profession, then let him fit his course of study to his remaining stock of time.

The American bar have become satisfied that the proper training for their profession requires three years. This is the judgment of the American Bar Association, which is their acknowledged representative, and it has received the general approval of the courts.

It is the office of education to lead forth the mind. Whatever be the subject of instruction, the learner must be made acquainted with three things—acts, facts, and the relations of these to each other.<sup>5</sup> Though he be studying some purely abstract science, he will find the human element of action color its history, and go far to measure its present value to him. Law is built upon acts and facts. It is not difficult to comprehend them; but it is only by the closest examination of their relations to each other that one can discern its lines of architecture, its points of stress and strain, its structural efficiency and adaptation to its ends.

Who, in any field of investigation, is the one to achieve success but he who has acquired a just sense of proportion and perspective, by which to see how one act, one fact, bears upon another? And who that in any measure has attained to this, has done so without long years of patient reflection and comparison? Knowledge is nothing, except as it leads to judgments. A lawyer's learning is

<sup>5</sup> See paper on "The Readjustment of the Collegiate to the Professional Course," in the Report of the American Bar Association for 1898, p. 582.

nothing unless he has added to it the faculty of transferring to one set of facts rules formulated for another. It has been said of Horace Bushnell that his mind held no unrelated facts. His legal education, more than his theological education—and he had both—had helped him to attain that plane of mastery.

The acts of legal history, the facts of legal expression, enough of these may be learned in a single year by a disciplined scholar to admit him to the bar of many a State. But only by further years of closer intellectual work can he apprehend what they really mean, and for what they are really valuable.

Especially is this true of legal education in the United States.

The main task of the Frenchman, the German, the Italian—the European, in a word—who makes law his profession, is to master one single system of jurisprudence, that of his own nation. Much of it he will find clearly and authoritatively stated in a single volume published by the government.

The American law student is fortunate if there be a code of such a character for the particular State in which he lives. He will find that few States have them, and that there is none for the United States. Yet with the free trade and free intercourse between the States which is the soul of our national life, the lawyer in each State must know something of the laws of others. He must know where to look for legal rules. Here, and only here and in Great Britain, they are mainly to be sought in the decisions of courts. Here, not as in Great Britain, they are to be sought in the decisions of many different courts speaking for many different sovereignties, each with equal authority. Our law students must be taught slowly and patiently—for thus only can it be effectively done—where to look and how to look for them

through uncounted volumes of reports and digests of reports, through textbook indexes, and bulky encyclopedias.

Systematic and protracted legal education has been forced upon the American by the genius of our government. The Englishman, until recent years, could dispense with it, and did dispense with it. England, in her Inns of Court, is now copying our example, under the pressure, through not an equal one, of an increasing empire.<sup>6</sup>

There are also world-forces to be reckoned with, working towards the same result.

The broadening and uplifting of legal education in the United States has been the result partly of national progress and partly of universal progress. The whole earth has been bound together by new ties. Electric cables, swifter ships, the feeding of one nation by another, have done much to unify its life. Postal unions, red-cross conventions, international patent-rights, copyrights, and trade-marks, international arbitration, international conferences and congresses have done more. These are unifying its law.

Comparative legislation has, therefore, assumed a new importance, and within the past ten years the beginnings have been made for an official and authoritative code of private international law.

This is the work of a congress of the principal nations of Continental Europe, held at the Hague, on the invitation of the Government of the Netherlands, in 1893.

It is a matter of just pride to Americans that one of the grounds for ventur-

<sup>6</sup> The scheme proposed is to form a National Law School at London under the direction of a principal and 27 councillors, consisting of the Lord Chancellor, the Foreign and Colonial Secretaries, and the Secretary for India, and others named four by each of the four Inns of Court, four by the Law Society, and one each by Oxford, Cambridge, and London Universities.

ing to call it<sup>7</sup> was the fact that a somewhat similar experiment had been attempted here by what is known as the "Conference of States" for promoting uniform legislation, which has been annually held, in connection with the meetings of the American Bar Association, since 1891, representing a majority of the States and Territories, and has secured the enactment by many of them of identical statutes on important subjects.

Treaties or conventions—a means denied to our States—were the fruit of the Hague Conferences, and under these substantially all Europe south of Russia, since the summer of 1902, has been pledged by the treaty-making power in each government (subject however to parliamentary ratification in most) to one uniform set of rules as to what law shall prevail in matters of personal *status* arising out of marriage, divorce, and guardianship; and to the convention as to guardianships Russia also is a party.<sup>8</sup>

It need not be said that these Conferences have been quite distinct from that which sat at the Hague in 1899 to create a Court of Nations. That did not look to the making of new laws for nations, but the judicial determination between nations in cases of dispute of their rights under the existing law.

Every such judicial determination, however, if it does not make law, will serve to strengthen and declare it. The first to be rendered (that in the "Pious Fund" case) was a simple application to international law of a familiar rule of municipal law—that of *res adjudicata*. The claim put forward by Mexico had

been rejected many years before in an international arbitration. It was, therefore—without inquiring into the justice of that decision—rejected at the Hague.

The Constitution of the United States contained the first governmental recognition<sup>9</sup> ever made in such a document of the existence of a body of jurisprudence of binding force known as international law.

At last we have a court, speaking for the whole civilized world, to declare as to any point what that law is.

We believe, in the United States, that this court is to be an enduring one. The original protocol of our treaty of 1903 with Colombia, for the construction of the Panama Canal, provided for a certain rental for a hundred years. Then the amount was to be fixed by mutual agreement for the next century, and so on from century to century forever. But it was provided, if at the end of the first the United States and Colombia should fail to agree on the new rental for the next, its amount should be referred to a high commission of two from each of the two countries and the president of the Hague tribunal, who should also be president of the Commission. And why should not this court of nations continue from age to age? Any particular nation may sink and disappear. The tendency of modern life towards consolidation may, in its increasing sweep, draw in great powers to become the dependencies of greater ones. But a court for all nations has elements of life derived from all, and may survive any or each of its original constituents. Such, at all events, are the hopes of every university teacher of international law. To him the erection of this court has put the bar of every country in a position of new dignity and power, and opened the way to what must be the creation of a larger,

<sup>7</sup>*Actes de la Conférence de la Haye, chargée de régler diverses matières de Droit International Privé.* The Hague, 1893, p. 25.

<sup>8</sup>*Annuaire* for 1902 of the Institute of International Law, 342, *Yale Review* for May, 1903, p. 16. Since 1899 there has been similar uniformity as to certain rules of judicial procedure through a prior convention of similar character. *Actes de la Troisième Conférence de la Haye pour le Droit International Privé.* The Hague, 1900, 78.

<sup>9</sup> Art. 1, sec. 8.

more authoritative, more universal jurisprudence.

It is the crowning act in the development of the law of artificial personality.

The business of the world was once transacted by men acting for themselves or for other men. It was regulated by courts acting only on men. During the last century it has been mainly transacted by men acting for intangible, artificial, persons called corporations, and it is with these corporations, public or private, that the courts, in most causes involving large interests, have directly to deal. A great body of new rules and conceptions as to the rights and duties of juridical persons who are not natural persons has thus been formed. Last of all, it is to be applied in causes between nations. A sovereign State is immune from judicial suit, unless she voluntarily submits to it. To such a submission the Hague conventions have opened a way, and the nations have already begun to tread in it.

Nor should we forget that it was an American whose faith in the perpetuity of this tribunal has given it a courthouse and a library befitting the lofty ideal of universal justice for which it stands.

Growth in law in all such ways as these involves growth in legal education. More subjects must be covered; more time devoted to it. It would not, indeed, be wise to give comparative jurisprudence and studies of that character any considerable place in the education of the ordinary lawyer. But a university which attains the university ideal must stand ready to teach them to the few advanced scholars who may and will demand it. This is the proper function of a graduate course.

The university then must offer such courses in law as will fairly occupy at least three years of the life of the ordinary man.

It does not follow that they must be pursued exclusively during three years. On the contrary, something would be gained in the case of many by commencing their legal education four years before it was expected to terminate, and giving half the first and second years to studies of another character.

What is the age at which a student who has decided upon what is to be the occupation of his life should enter upon the special preparation for it?

It is clear that such a decision cannot reasonably be made or recognized until he has at least neared the stage of manhood. Nor should the door of professional education be opened to any one who has not received so much of secondary education as is necessary to equip him for the common duties of an American citizen. The man must be shaped before the lawyer.

Most law teachers will probably agree that the study of law is best begun by the ordinary man at the age of twenty or twenty-one. If he undertakes it earlier, he is apt to be found lacking in mental discipline and general information. If he undertakes it later, he is apt to feel it irksome to learn the elements and grammar of a new science which is also an art, and to give undue emphasis to that part of it which most resembles whatever may belong to the studies he has last pursued.

This is the age of the Junior in the larger of our American colleges; of the Senior in our smaller ones. He is thenceforward admitted to a large freedom of choice between the courses of study that may be open to him. His choice will or should express his own conviction as to what will help him most in doing his life-work. It will or should be founded on some serious consideration of what that life-work will be. He is now of an age to elect that. He must

elect it if he would make his remaining time at college worth the most.

Nature might seem to point to an age yet earlier than twenty; for physiologists tell us that the brain of the average man at nineteen has attained a weight which is never afterwards increased.<sup>10</sup> But any choice involves a comparison, and, in making that, experience is a large factor in the capacity to judge.

A man must begin his legal education at twenty if he would complete it by twenty-three or twenty-four, and to compel him, against his will, to defer beyond that his entry upon the practice of his profession, is to wrong both him and the community. He has been denied the freedom that belongs to manhood. He has been forced to exchange a year of practical experience at the bar for a year of theoretical instruction in studies for which he did not care. The community also has lost a year of service from an educated citizen.

The time has come when we must confess that our American university system has attempted the impossible. It has aimed at adding to the education furnished at the English university the education furnished at the German university, and at requiring both from all. The American people have been strangely patient under this strain. They are patient no longer. They are glad that those whose life is to be that of the scholar should have these ample opportunities for culture. They are determined that those of their sons who are to live less among books and boys than among men should begin their life-work in time to reap some of its rewards before the flush and joy of youth are past.

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<sup>10</sup> This is the result announced, as to men, after a comparison of nearly 1,200 cases, by Professor Marchand of the University of Marburg in his *Ueber das Hirngewicht des Menschen*, 1902. Women, he says, attain their maximum brain weight (about nine per cent. less than that in the case of men) at sixteen.

There should be some chance for a man of twenty-five, although he be devoted to a learned profession, to have a wife and home. One of our leading medical journals<sup>11</sup> has recently declared that the existing state of things is right, and that young men who enter the professions must recognize the fact that they cannot, in many cases, afford to be both educated and married. No educational system which justifies such views can stand. No country which holds them, however great and powerful it may be, can long preserve the strength and purity of its institutions.

The main direction of American government has always been, must always be, in the hands of the lawyers.

They will naturally and inevitably give both form and character to most legislation. If others devise new laws, they must draft them. All laws, new and old, must be administered by the use of courts, and there the lawyer has practically an exclusive field. In the highest executive offices, also, our national history teaches us that the lawyer is more often found than those of any other class in the community.

He is, then, an important factor in our public life. He ought to come to it guarded by the good influences of home and family—of a home and family of his own.

There are a few of our universities where degrees under the faculty of law are refused to any who have not previously received one under the faculty of arts. In these it has been found a practical necessity either to allow the college student to elect courses in the professional school, to count on both degrees, or in some way to shorten the college course. This may be by requiring fewer hours of study for the collegiate degree, or by continuing instruction for those

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<sup>11</sup> The Philadelphia Medical Journal.

who wish it during the three months allowed for the vacation of the ordinary student.

While not so absolutely a necessity in case of other universities, they must all ultimately defer in some such way to the just demand of public opinion.

The simplest course, occasioning the least friction, and in best keeping with our educational traditions, is that now so generally adopted of sending college students who desire a legal education to the law department to get it, and treating law like any other of its sister sciences which may be a subject of elective study.

It is an historical science. It is a science of ethics. Its rules of evidence rest on logic; of pleading on the analytic faculty. Hermeneutics is one branch. Metaphysics must be understood to grapple with such problems as those depending on the nature of a legal obligation. The student who prefers to learn how such subtleties are met, and what they mean, from such discussions as he may find between Marshall and Bushrod Washington in Wheaton's Reports, rather than from the Platonic dialogues, should be free to do so.

This is in accord with the true spirit of a university. It is the practice at Oxford.<sup>12</sup> If it is not in accord with the traditional spirit of the American college, it is because our original colleges stood alone by themselves. There were no universities, except in name, in the United States, until the nineteenth century was well advanced.

It is seldom that anything can be gained unless something is lost.

The old-time charm of the American college has been lost. It has gone forever. It was mainly that of a gathering

of young men, all engaged in the same studies under the same teachers, and so thinking the same thoughts, led by the same ideas, rejoicing in the same inrush of fresh conceptions of what the world's life was, and had been, and was to be.

We have lost this in the present college, with its system of elective studies for the closing and the best years. We have lost it because our Juniors and Seniors—those whom we well call "the upper class men"—we have turned into university students, and scattered among different instructors, ten here and a hundred there, parting daily farther from each other; every group mastering for itself a new literature, and each looking at all things from a different standpoint.

In other respects, however, the college of previous centuries is the college of ours. The students may room in the same building, eat at the same table, belong to the same societies, cherish the same traditions. All this is preserved for those who may elect to receive their instruction in the professional schools. Their home will remain at college, and their closest associations with the class in which they are there enrolled.

They will bring back to their fellow classmates something of distinct value. The power of a liberal education lies largely in its helping to a better understanding of the causes of things. Every thoughtful student is seeking for the forces which move the world—the moral world and the world of organized society. The studies of a college curriculum have been mainly such as tend to fix upon the mind an impression that great changes in human social organization are generally the result of individual leadership, and largely of political leadership. This is the lesson taught by the classic authors; by much of our history—by all of it, one might say, until recent times. As Herbert Spencer has put it: "In so far

<sup>12</sup> Oxford allows specialization in law from the outset of Freshman year, and there is an "honor school" for honor men in law, in which the final examinations are taken.

as they are more than linguistic, the 'Humanities' to which the attention of the young is mainly given, are concerned with personalities."<sup>13</sup> The student of law, on the other hand, is directed to a product of natural causation. Little of it is of governmental origin. The people in their daily life, the merchants in their daily trade, come insensibly to act in a certain way. Conformity to this mode of action we call the rule of the common law or of the law merchant; and government, through its courts, soon recognizes and enforces it.

The new key of truth, which the nineteenth century discovered—the master key—was that of evolution. The development of law for any political community is an evolutionary process, and the student of legal history sees this on every page. The great lawgivers, he finds, are those who put in form what the people, by their conduct, have approved, or by their standards of morals and judgment have shown themselves ready to approve. The Greeks were right in rejecting Homer's and Draco's word for law, *θεσμός*, and accepting that of Hesiod and Solon, *νόμος*. Its lasting and true strength is not in that it has been ordained, but in that it speaks for the settled usage of mankind.

The college student who enters a professional class will also bring back to his college room at night a new impression of the force and value of public speaking to us and to our times. He had been studying the orations of Cicero and Demosthenes; telling to the men of their day; unreal and lifeless to those of ours. He is now studying the great arguments of Webster—those greatest of his arguments, not in a Senate where party feeling may have controlled his words, but in a courtroom where the lawyer was

fighting to win a cause. He is reading the great opinions of Marshall, each a State paper, which makes forever plain what the framers of the Constitution had perhaps been willing to leave doubtful, because to do otherwise would have risked, if not assured, its rejection by the people. He will find nothing of which to be ashamed in the literature of American law.

It must be studied by all who would know the beginnings of American letters.

It was not our colleges that gave us a national literature. They produced a pedantry and scholasticism; an overweighted verbosity, which defaced the productions of our colonial authors, until Franklin educated himself, and soon his country, to better things. But it was not until the generation after Franklin's—that of Hamilton and Marshall—that we were to have an American literature, and it came first as a literature of lawyers. The political writings of Hamilton, the opinions of Marshall with their measured and majestic tread, the great speeches of Daniel Webster; these preceded Washington Irving, and have outlasted Washington Irving.

3. Should law be taught by the university both as a science and an art?

It is both. It is, therefore, not taught unless both are taught. The university can give half lessons in nothing. Nor need she hesitate to teach this art because of anything in its content or quality.

As an intellectual exercise nothing can be more strenuous, and nothing can be more satisfying, than the contests of the bar, or the discussions between Judges that may follow them in the consultation room.

In the office of an Ohio lawyer and law professor who has recently passed

<sup>13</sup> Facts and Comments, 32.

away<sup>14</sup> there hung a paper with this quotation from Robert Louis Stevenson: "To be wholly devoted to some intellectual exercise is to have succeeded in life; and perhaps only in law and the higher mathematics may this devotion be maintained, suffice to itself without reaction, and find continual rewards without excitement."

The great master of English speech who wrote these words did not overrate the fruits of life that may be gathered by those who follow the practice of the law.

4. By whom shall law be taught in a university?

In a country holding to an unwritten common law I believe that it can be taught best, if not taught only, by a professional lawyer. No one but he can follow and appreciate, in all their relations, the fast-coming decisions of the courts, which from year to year give it new form and color.

The scholar in literature, and even in economics, is but a sciolist in law, unless he has received a legal education.

Nor is it simply because he does not always catch the full force or the full limitations of a judicial opinion. His almost inevitable tendency is to attribute too much to the effect of legislation. The lawyer knows too well that for one evil which a statute cures it is likely to produce twenty that are unforeseen; and he knows also that the statutes are few that can be enforced according to their terms.

On the other hand, he knows, as can no one else, the saving power of the common law and of the general rules of equitable jurisprudence. Take, for instance, the great aim of what we know as "Organized Labor"—the repression of the individual. Here is a new social force for governments to reckon with.

Let economists deal with its economic aspects. The lawyer must be left to deal with its legal aspects.

Such a decision as that rendered last winter in the case of the Taft Vale Railway Company against the Amalgamated Society of Railroad Servants,<sup>15</sup> in which over \$130,000 was taken out of the treasury of a trade union by the English courts to compensate one who had suffered from a boycott, can only be understood and expounded by one trained in the law of private wrongs.

Nor need our universities fear difficulty in finding lawyers competent and willing to join their faculties. Many who would not, and in justice to their families or perhaps to the public interest could not, give their entire time to the work of teaching law, will, in every community, be found ready to give part of it. Such men cannot alone support the burden of a modern law school. There must be those who give their lives to it. But the scholarly practitioner or Judge, who adds to scholarship that indefinable something which makes the teacher, can aid, and often can surpass, them, from the very fact of his outside work, which brings home his teaching to the men he meets, and gives it an aptness and freshness of illustration to be gained in no other way.

No man forfeits standing in the republic of letters by entering the profession of the law. It is a profession with a living and distinctive literature. It is the necessary and never-ceasing task of those who enter it to study that literature as it is found in judicial opinions of the highest, and presumably the ablest, courts. Those pronounced by English Judges are seldom written. American opinions always are. They are to be published by the State. They are to be a permanent record of the law. They

<sup>14</sup> Gustavus H. Wald. See *American Law School Review*, vol. 1, No. 1, p. 24, and *Reports of American Bar Ass'n for 1902*, 788.

<sup>15</sup> L. R. Appeal Cases of 1901, 426.

should be, therefore, and many of them are, in literary form, examples of concise statement, logical reasoning, and clear expression.

Law teachers who come to their classes fresh from the study, or perhaps the preparation, of such opinions, come in the spirit of scholars, and it is a knowledge and appreciation of this same kind of literature that it is their great object to impart.

One lesson in university life the American university has yet to learn. It is the unity of the university. The English university has its different colleges, but the same teachers and examiners and the same government. The Continental university has no colleges, and different faculties—faculties each with a life and function of its own. But here again is the same government, and the same unity of aim and purpose.

The American university has, with hardly an exception (whatever may have been its paper scheme), been the outgrowth of a single college; generally a college of arts, sometimes a college of science. Those originally in control of the institution have naturally impressed upon it a certain character, and this character has been deeply affected by the kind of studies to which at first instruction was confined. The faculty which taught these has not always looked on the newer faculties, as they arose, with entire fraternity. If there have not been jealousies, there have been misunderstandings. Full credit has not always been given for scholarship in that which is not purely an affair of scholars. There has been vague talk of "culture studies," as if there were not culture wherever a serious student, under the guidance of a serious teacher, enters any field of inquiry, to aid in exploring which a university may offer apparatus and instruction.

The feeling of fraternity and equality between the different faculties of our universities has in the past been weakened often, and not unreasonably, by the meager instruction offered in the professional departments.

A medical or a technological school cannot thrive without adequate material for object lessons; without laboratories and workshops. A law school cannot thrive without a sufficient library. No professional school can meet the wants of the present day where the instruction given is not thorough and scientific. But there are now few of our universities in which these conditions are not fulfilled as well in the professional departments as in any other. The advance in this respect during the past forty years is one of the striking events of American history. It began with the upheaval of all our institutions due to the Civil War. Slavery had been the one great theme of thought, the one great line of cleavage in all discussions on which its continued existence here had the remotest bearing. It had provincialized the South and the North. It had provincialized—as against the world—our whole country. The close of the war brought us to a new viewpoint. We began to see that there were other barbarisms now to be attacked. Antiquated methods in education were one.

Nowhere were they more obvious than in the inadequate preparation offered by our universities for professional and technical training. To recognize the evil was to remedy it. The forty years that have elapsed since the emancipation of the slave have witnessed a revolution in our professional schools. Examinations for entrance and for graduation have been introduced. In most of them one or both did not exist in 1863. The course of study has been prolonged from a year or eighteen

months to three or four years. Libraries, laboratories, apparatus of every sort, buildings, have been provided. Instruction in every branch has been strengthened; in some supplied.

This new condition of things is the one to be regarded by all educators to-day. It is for law, thus taught and illustrated, that a higher place in the American university is due.

Why is it that during the past ten or twenty years our professional and technical schools have grown so much more rapidly than our colleges of arts? Why is it that last year there were over 14,000 men in our law schools as against less than 6,000 in 1890, and less than 2,000 in 1870? Why is it that last year there were 120 American law schools, as against about half that number in 1890, and but five in 1840? Why is it that out of these thousands of law students hardly a fourth part have taken a full college course?

It is because the country is satisfied that there is not time for both in the case of the average man, and that of the two, for the making of the average lawyer, the law school course is the more important.

Educational systems must be graded and arranged in the main for the average student. The best minds need the least help. To give instruction to those who are by nature brilliant scholars, acute reasoners, clear thinkers, is the supreme joy of the teacher. To receive it from one whom they feel to be their intellectual equal, and in knowledge their superior, is an equal joy to them. They may be willing to prolong it by adding to a four years' college course a three years' law school course. The ordinary man will not. He will look through the university catalogues to find where he can get the most in five or six years' time, or he will pass by the college alto-

gether, and close his secondary education with the high school.

If we wish to save our colleges, we must readjust them to new conditions.

When they belong to universities, the simple and natural mode is to allow their students to elect to pursue professional studies, either exclusively or in part, during their two last college years; and if they elect them exclusively, or to the extent demanded by the Law Department, to let these years count both for their degree of bachelor of arts or sciences and for that of bachelor of laws, or, in those universities which prefer to give to their diplomas a more high sounding name, for that of doctor of law.

There are friends of the high school who believe and desire that it should push its instruction forward to the point at which the pupil can be safely left to choose his studies for himself. The City Superintendent of Schools in New York City, Dr. Wm. H. Maxwell, in his last year's report referred to this proposition thus:

"Every close observer of educational history will, I think, agree that this movement is necessary if the college course is to be preserved as a course of higher training lying between the public high school and the university professional school of law, or medicine, or engineering, or theology. Nor, if the public high schools do their duty, will this shortening of the college course result in any lowering of the baccalaureate degree. Every public high school should aim to fit its students not merely to enter in the freshman year, but to secure advanced standing as far as the beginning or even the close of the sophomore year in college. I believe it is a question of only a very short time when the New York City high schools will do all of the work now required in the freshman and sophomore years of our great universities.

Their graduates should then be permitted to obtain the baccalaureate degree in two years of college study. As the table of ages already given shows that the average of our graduates is about eighteen years, the high school graduates would then receive the degree of bachelor of arts at twenty, which is quite young enough to enter upon professional study."

The universities have been crowding the work of the high school up by steadily advancing their standards of admission. They are slowly beginning to rec-

ognize the inevitable result. If a lad gets at the high school what he formerly got only at the college, he needs less time at college to get the rest which it is proper for a college to give him. It is not fair to him to turn every college, as to the studies of the last two years, into a German university, unless he is then allowed the same freedom of selection conceded by the Germans, with the right to devote what of his time he pleases to law, medicine, or theology, and to receive the degree for which proficiency in such subjects naturally calls.

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## The Use of Law Books.

By JOHN A. MALLORY.

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THE study of law is the study of books to an extent unknown in other sciences. The physical sciences are merely explained in books, and are studied by observation and experiment. The inductive method pursued in them is applicable also to the study of the principles of the law by examination and comparison of judicial decisions. But the student of law cannot make experiments; he can only observe the results of past experiments in cases recorded in the reports. Each such case is to him what the specimen or the experiment is to the naturalist. Except what he may be taught by word of mouth, the study of books is almost his only resource for the rules and principles of the law, as well as for their practical application.

In the practice quite as much as in the study of law recourse to the books is imperative. Even though a lawyer have a thorough knowledge of the rules and

principles of the law, he must refer to the cases in which they have been developed as guides in their application to new cases. To inform himself, to advise a client, or to prepare, conduct, and present to the court a case, whenever any question of law arises, a careful and often an extensive examination of precedents and other authorities is required. Preparation for this work may well be regarded as a part of legal education.

This view was forcibly presented by Hon. Simeon E. Baldwin, in a paper on "Law School Libraries," before the American Bar Association in 1894. Referring to the study of digests and of reported cases as indispensable to the practitioner in any case of difficulty, he continued: "One great aim of legal education for America, then, must be to teach how best to handle such books, so as to get the most out of them, and to be able to present it in the most effective way. The scholar must learn to search