

LAW IN THE LIBERAL ARTS CURRICULUM

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On the morning of November 11, 1954, thirty men took seats around a huge table at the Harvard Law School. The group was made up of a businessman, a Federal Court judge, a lawyer, a provost, a law school dean, a liberal arts college dean, several professors of law, and professors of economics, government, industrial history, philosophy, rhetoric, and sociology. In the words of Dean Griswold, who had come primarily to welcome the group, these men had been called together to discuss "the potentialities of law as a cultural subject in the liberal arts curriculum, primarily for people who do not expect to be lawyers."

The conference, which was sponsored by the Carnegie Foundation of New York, had been well planned. It was scheduled to consume two and one-half days of presentations and discussions, with the various aspects of the subject to be treated in separate sessions. Each of the participants was furnished, in advance, certain preliminary materials designed to prepare him for enlightened participation.

The first item was Sir John Fortescue's exhortation of Prince Edward to undertake a study of the law. This was an almost five hundred year old example of an attempt to convince a future ruler that a knowledge of the law was important to the proper functioning of those who would govern.

Then came Sir William Blackstone's lecture which had been read in the public schools of England on October 25, 1758. Blackstone had urged that everyone should have a competent knowledge of the law, "which," he said, "is to be the guardian of his natural rights, and the rule of his civil conduct."

An excerpt from Burke's speech on conciliation followed. "This study," he said, "renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources."

To show that a course in law for laymen had been given at the College of Philadelphia as far back as 1790, a portion of a lecture given as part of that course by James Wilson, a justice of the Supreme Court of the United States, was included.

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"But the law and liberty," said Justice Wilson, "cannot rationally become the objects of our love, unless they first become the objects of our knowledge...The science of law should be the study of every free citizen, and of every free man."

Richard, Lord Atkins' foreword to Edward Jenks' "The Book of English Law" (1928) was quoted. One sentence suffices to bring out his central theme: "One would have thought that some knowledge of elementary law is an essential to the training of the future citizen, as it is admitted is some knowledge of elementary science or of letters."

A paper, read by Woodrow Wilson before the legal education section of the American Bar Association in 1894, was reproduced. It was Wilson's feeling that "Law is a branch of political science, and in this day especially we need to insist in very plain terms upon its study as such." Needless to say, the influence of Woodrow Wilson is still felt at Princeton.

The next item was a lecture given by Professor Paul A. Freund of Harvard Law School at the School of Law of Washington University in 1953. One portion of that lecture should be of special interest to teachers of business law: "You will see that what I have in mind is no merely 'practical' course in 'law for the businessman' or 'law for the engineer.' What is wanted is not instruction in how to endorse a check, any more than general education in science means training in the repair of an automobile engine, useful and money-saving as both these accomplishments may be. After all, there are specialists, lawyers and mechanics, to whom the citizen can turn for these services. But to understand something of the possibilities and limitations of science, or the methods and development of the law, as a basis for judging the serious issues of security and freedom that beset us -- to understand these things is a responsibility that is non-delegable."

Another phase of the preliminary materials was concerned with current offerings in law as part of the liberal arts curriculum. Four courses were described: "Law in Society," given at Wisconsin, was centered around the development of the law concerned with industrial accidents; "The Structure and Growth of the Law," given at Harvard, dealt with the law of conspiracy; "Law and Society," a Columbia offering, took up the development and basic principles and procedures of common law and constitutional law in one semester, and tied economic and social data into the development of administrative agencies and administrative law in the second semester;

"Sociology of Law," a second Harvard offering, covered four topics - judicial procedure, synthesis of decisions in tort law, scope of legal protection afforded to contract, and regulation of labor relations. To round out the picture on current offerings, Professor Harold Berman of the Harvard Law School reported on the response to a letter sent to sixty college professors, excluding the four whose courses were described, asking about the introductory courses in law (excluding Const. Law, Adm. Law, Labor Law, Business Law, and Theories of Law) they were supposed to be teaching. He reported that, of the thirty-two who replied, seventeen said that they were not teaching such a course, but several of them were interested; that fifteen had law degrees or were lawyers; that five of the courses were designed for pre-law students; that most of the students taking the other ten intended to go to law school; that, in all of the fifteen courses, the instructor was concerned with presenting a broad picture of the nature and purpose of law.

The final item of the preliminary materials was a report entitled "Teaching Law in the Liberal Arts Curriculum," written by Professor Moffatt Hancock at the request of Dean Carl B. Spaeth of Stanford Law School. The report was thorough in giving reasons for the introduction of law courses in the liberal arts curriculum, and in suggesting ways in which this might be done. One portion told the history of law teaching in America. It pointed out that, at first, law was offered to all. Then, when it was found that most of the customers came from the ranks of future lawyers, the coverage was narrowed to professional training, and the ideal of law as a cultural discipline was abandoned. The field of government was split: the work of courts and rules of law were extracted by the law schools; the rest passed into the hands of political science or government departments.

The participants in the conference were thus prepared to undertake a discussion of the question whether or not legal studies should be restored to their original place in liberal education, and the further question, assuming an affirmative answer to the first, as to how this should be done. It would take too long to recount the numerous and elaborate observations made by the speakers and discussants, interesting and enlightening as such a review would be. We shall, therefore, merely touch upon some of the thoughts expressed.

Here are some of the reasons given for inclusion of legal studies in the liberal arts curriculum: to acquaint the layman with the technique of legal reasoning; to provide him with certain rhetorical or logical advantages, such as clarity of expression, precision of definition, organization of thought, and capacity to deal argumentatively; to help social science students to redefine their concepts of history, economics, philosophy, and political science in such manner as to incorporate the legal aspects of those studies; to convey an understanding of the demands of due process and its procedures; to make clear that the ultimate sanction of rules lies in public opinion; to bring about an understanding of the law as a social institution and as a means of achieving justice in society.

Professor Freund summarized the objectives of law courses for liberal arts students as follows:

"The first objective is the aim of a better understanding of the legal order on the part of the layman. What is the judicial procedure; what is advocacy; how far is a judge free to decide according to his own likes; what are the tasks of the lawyer in our society? The layman, even the college-trained man, tends to come to these questions, viewing the law either mystically or cynically, and in either case rather mistakenly.

"The second objective, I should suppose, is a better illumination of other humane studies, which is to say a better illumination of the understanding of our civilization. These relationships or at least many of them are quite obvious. The relationships of law to history and government and public administration need no emphasis.

"The third objective, I take it, is that of training students toward more responsible active thinking, toward the experience, vicarious but nevertheless realistic, of making decisions and forming judgments, on staking on them, as it were, their professional reputation."

The participants were virtually unanimous in feeling that legal studies for non-law students was a good thing. While opinions varied as to the type of course or courses that should be offered, there seemed to be agreement on the point that such courses should not be mere capsule courses emulating those of the law school curriculum. It was also evident that vertical treatment of subject matter was preferred over the horizontal variety - better to provide depth than breadth of coverage.

How many courses should be offered? Being, relatively speaking, on the outside looking in, who would dare think of proposing more than one or two courses at most as a starter? But Dean Spaeth of Stanford Law School would go all the way - he would like to see the law introduced as a major field of concentration.

Dean McGeorge Bundy of Harvard College warned of the difficulties to be expected in attempting to add new offerings to an established curriculum. He, therefore, advised against any attempt to bring in the law as a major field of study. On the other hand, he was in favor of some legal study on the part of non-law students. His enthusiasm for the inclusion of law within the scope of liberal education was expressed in these words:

"We are living in a world where our capacity to acquire generalized knowledge is far greater than our capacity to apply it to our society without imperiling the freedom of the individual human beings of which it is composed; and in a world where increasing regulation is essential to providing efficiency, peace, and order, but is a major threat to freedom. In such a world, the discipline and the basic outlook of the law has a critical contribution to make to general education. If a course in law is composed of root knowledge and root discipline, as I am sure it can be in the hands of able teachers, it can, in Mr. McLeish's words, "be eternally enriching and never ending in its sustenance" to the individual, and also be a significant contribution to the survival of our free society."

It may be added parenthetically that, not to be outdone by Harvard, The Yale Daily News of April 13, 1956, announced the offering of a course in law to undergraduates. The announcement contained the following statement made by Dean Rostow of the Law School: "The Law School is happy to revive the old Yale tradition of a course in law open to undergraduates. The course reflects the growing concern of our law faculty with the problems of explaining to laymen the way in which law functions as the central organizing principle of our society."

Now you may ask why we who teach business law should be concerned with the movement to bring legal studies within the framework of the liberal arts curriculum. The answer is that there is something about the movement that is challenging to teachers of business law. While the participants in the Harvard conference were demonstrating their interest in law courses for undergraduates, why did they not hold up business law courses as noble examples of what can be done? Why did

the group not include at least one business law teacher? Why was not the possibility of recruiting business law teachers to instruct liberal arts students considered? Do we have a special desire to partake in the training of businessmen to the exclusion of others? Are we doing what the conference decried - emulating the law school curriculum in capsule fashion? Are we making the most of our opportunities as educators?

If you want to know what law school professors think of business law courses, listen to this thought expressed at the conference by Professor Harry W. Jones of Columbia Law School:

"I think that I am expressing the views of almost all first year teachers in the law schools when I say that most of us have the feeling that it would be better if the little knowledge of law and its function that our students now bring to law school had been omitted from their earlier experience. Many of us in the first year spend as much time trying to cure misconceptions as we spend stimulating new ideas. With certain notable and distinguished exceptions, such schooling in law as there now is in the college is, by and large, bad schooling. One important function of the undergraduate course in law we are talking about would be to set up necessary counter-irritants and correctives.

"Unless an introductory course in law gives the student some kind of awareness of the essential methods of decision, advocacy and counseling, it will inevitably communicate to him a purely positivist, utterly rule-minded, philosophy of law. Consider how hard it is to get over to an ex-student of Business Law, now taking Contracts I, that there is more to law than rules. After all - he would tell you if he dared - he learned five times as many rules in a three-hour course in Business Law as he is going to learn in his whole year's course in Contracts! I repeat the point I made at the outset: our question is not a choice between giving the undergraduate a theory of law and giving him none at all; it is a choice between giving a good legal philosophy and giving a bad one."

Now there is no doubt but that any business law teacher present would have jumped to his feet and challenged the implications of that statement. But to what degree would he be successful? Would he speak from an unwavering conviction that business law teachers were on the right track? Could he completely justify a distinction between legal studies in the business school and those in the liberal arts college? Could he justify the shallowness of breadth as compared with the gravity of depth? Would he be reflecting the thoughts of other business law teachers?

The latest issue of the American Business Law Association Bulletin was dedicated to a symposium on the place of business law in higher education. Surely the variety of thoughts therein expressed reflected the composite thinking of business law teachers.

Professor Frasca justified the study of business law on the basis that the goal of education was the discovery and dissemination of truth; that business was an important part of truth; and that the legal significance of business transactions was an essential part of business. He might have justified the study of law on the basis of the legal significance attached to all human activity, or on the basis of its pervading role in the realm of truth. He also presented a vast array of coverage, which has become the general pattern and standard of business law courses. While such coverage might be justified in terms of its asserted aims, how close to the mark has it enabled us to advance? Could we, with such coverage, hope to achieve the thoroughness with which any genuine educational endeavor should be undertaken? Professor Frasca gave a clear picture of business law, with the purpose in mind of awakening an appreciation of the field. But the clarity of his picture, coupled with current thinking concerning the law in undergraduate instruction, should cause us to take a closer look at our position.

Professor Raphael took such a look. He traced the history of business law. It started with the training of accountants. The liberal arts colleges would have nothing to do with business subjects, and so schools of business were founded. When other business courses were introduced, such as marketing and management, business law assumed more breadth and less depth. Then traditional liberal arts subjects were given a greater and greater role. Business executives began preferring liberal arts graduates to business school graduates as junior executives. Students followed suit, taking the liberal arts training to be followed by post-graduate work in business. The trend might lead to the elimination of the undergraduate business school. Where would this leave the undergraduate teacher of business law? He could disappear or bring back the law to the liberal arts curriculum, dropping the word "business" from "business law." But such a change would require some original thinking, a change in techniques and attitudes, and the ability to teach in depth.

If we followed the approach of Professor Dillavou, we would find that our objectives in teaching business law are in consonance with the objectives of law courses offered to liberal arts students. Professor Dillavou spoke of education

as having a two-pronged objective: the first prong consisted of preparing the individual for service to society by enabling him to acquire knowledge and to develop skill in reasoning and in making decisions; the second prong provided preparation for living a happy life. In his view, business law was especially qualified as a means by which an individual could acquire useful knowledge, exercise careful thinking, and learn to make mature judgments. To even the trained eye the difference between the objectives expressed at the Harvard conference and those here expressed would be imperceptible. It would seem, therefore, that at least to some of us the objectives of business law teaching could be considered no different from those involved in the teaching of law as part of the liberal arts curriculum.

Might it seem odd that a symposium on business law produced so much expression in favor of legal studies for liberal arts students? Professor Lavine spoke of basic law as essential to a liberal education. And Professor Gillam said that law, as a social science, "ought to resume its historic place in the undergraduate liberal arts curriculum..."

Speaking personally, for I cannot profess to reflect the thinking of all business law teachers, I believe there is an expression that aptly describes our position: "We're here because we're here." I believe that we are teaching business law because the business schools have given us the opportunity to teach law to the layman. I believe that the objectives of the business school should be no different from those of the liberal arts college. I believe, with Professor Frasca, that business is as proper a field of study as any undertaken in the liberal arts college. I believe, with Professor Raphael, that the only reason for business schools is the exclusion of business courses from the liberal arts curriculum. Thus, the difference between the business student and the liberal arts student lies merely in the field of concentration. I believe in the objectives outlined by Professor Dillavou, and I believe in the contribution that legal studies can make toward the attainment of the contemplated goals, not only in the business school but also in the liberal arts college. I believe, with Professor Lavine, that the study of law should be more than "a mere handmaiden to the study of business principles and business methods." And I believe, with Professor Gillam, that our offerings should not be what he referred to as "peewee law" and what was referred to at the Harvard conference as capsule courses - superficial coverage of the law school curriculum.

We need to get away from the idea that we are preparing future clients. We need to get away from the idea that we teach law to provide a tool. We should begin thinking of law as a field that lies within the realm of liberal education. We should re-examine our offerings in the light of our professed and attainable aims. We should stop thinking of law as a business subject and begin thinking of it as a field worthy of serious study by all students in higher education.

The movement to revive the teaching of law in the liberal arts curriculum presents a challenge to business law teachers. The challenge becomes even more imposing when we face the reality of objective appraisals of our work. In a recent letter received from Thomas H. Carroll, vice president of the Ford Foundation, in response to a letter in which I relayed Bob Stone's suggestion that a study of the business law field be undertaken, the following observation was made: "You realize, I am sure, that I am entirely sympathetic to the right type of business law training. I fear, however, that the 'how-to-do-it' manual type of training that was developed years ago to bone candidates for the C.P.A. exam all too often characterizes the business law programs in collegiate schools of business."

In a recent paper presented at the annual meeting of the American Association of Collegiate Schools of Business, Professor R. A. Gordon, Director of the Ford Foundation Study of Business Education, in speaking about curriculum, said: "The core should be topped with an integrated course in business policy and an intellectually challenging course on the legal, political, and social setting of business. The function of the latter might be served by various history courses. I think that the traditional sort of course in business law could be dropped."

I wonder how we stack up in the face of this further observation made in the same paper: "I have already indicated that the level of instruction needs to be raised, particularly in the undergraduate schools. This means more selective admission standards or higher attrition rates or both. The intellectual quality of most undergraduate instruction in business courses is too low, and this is true in many graduate courses also. Students need to be provided with more of an intellectual challenge, their logical faculties need to be more fully developed, they need more practice in problem solving, and their understanding of the structure and functioning of business needs to be both sharpened and broadened. They need to participate in the educational process more actively than they now do. This means less reliance on lectures and textbooks, more library assignments, more problems and cases, more reports to write, and fewer examinations in which the only communication skill required is the ability to make a checkmark."

We are being challenged on all sides. What the Harvard conference had in mind for liberal arts students represents what we should have been doing all along. And because we have not been doing it, even our value to business education is now being questioned. With our legal training, we can play a great role in the field of higher education, but only if we truly realize our potential and conscientiously convert it to practice.