

Teaching and Learning the Law*

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My belated presence at this function typifies the friendly relations which have long existed between this faculty and Dalhousie, and gives me the opportunity for renewing friendships with members of the staff begun in those spacious days when I was privileged to have daily contact with groups like this. It recalls also the mutual interchange of teachers which enriched both schools.

The opportunity to speak to law students again is an opportunity to mitigate the loneliness which attends a judge's life, and which is peculiarly poignant to one recently moved from the camaraderie of a campus. It provides also an opportunity to be articulate again upon subjects of common interest to all men of law.

To my regret it has been borne in on me that this is only an occasion of qualified joy; for the examinations are yet to come and spectres of doom haunt this convivial occasion. Moreover, this audience is in major part a group such as surely was never seen on land or sea—outside of Ontario. The spectacle of young faces "sicklied o'er with the pale cast of thought" of impending ordeals is bad enough; but to know that success therein will not carry them to a graduate's Elysium but merely to a penitential purgatory for another term of years is as appalling to the speaker as it must be to you. Forsooth, you are a motley group such as Walter Scott used to designate as Sons of the Left Hand and Wearers of the Bar Sinister.

However, I shall proceed to say what I have to say in the hope that—deficient as you are reputed to be in practical knowledge—you may understand the wisdom I am about to bestow upon you, diluted as it must be. I trust, when I have finished, the press of this Queen City will not regret, as the *Globe* once did of a speech by Sir Charles Tupper, that the speaker had come so far from the east to say so little.

*An address by the Hon. Vincent C. MacDonald, of the Supreme Court of Nova Scotia, at the annual dinner of the School of Law, University of Toronto, on March 4th, 1955.

The purpose of a university law faculty is three-fold:

(1) to provide training in the principles, processes and spirit of the law sufficient to prepare men for the competent and ethical practice of a learned profession;

(2) to teach law for its cultural value and in all its relations to other branches of knowledge, and in such a way as to arouse philosophical and independent thinking concerning law as a living instrument of human government; and

(3) to teach law (in both these aspects) in an atmosphere of free inquiry and inflexible integrity.

This purpose envisages education for the discharge of a great social task, which requires but transcends vocational techniques. The utility of this conception was recently endorsed by the Prime Minister of Canada—a practising lawyer of great distinction—when he said:

I have never been able to persuade myself that a knowledge of legal techniques is enough of itself to make a good lawyer. . . . To me, the study of law is really the study from a special point of view of what experience has shown to be the behaviour best suited to good economic and social relationships of men living within a political framework. . . . The study of law properly conceived inevitably involves an attempt to understand the nature of men and the nature of society in which men live. We lawyers, of course, regard the law as a profession, but before being a profession, it is one of the humanities, and as I conceive it, the first function of a law school is to emphasize the humane aspect of our legal training.

To this I add the opinion of Lord Macmillan that “it is only by the liberality of our learning that we can hope to merit the place in public estimation that we claim, and to render to the public the services they are entitled to expect from us”.

In discharging these basic functions a law faculty encounters two great external facts:

First—the necessity of conforming to the regulations of the local law society as to the nature of the professional education which all candidates for the bar must possess. Accordingly the faculty must try to produce men who measure up to this vocational standard. Nevertheless a university faculty cannot be satisfied to do merely this: it must seek to educate men broadly and deeply in the fundamental principles and processes inherent in the administration of justice, which is the lawyer’s peculiar preserve; and to equip them for the tasks of leadership which inevitably come to the lawyer. It may indeed produce the mediocre and merely proficient; but it must seek to nurture greatness and to inspire the humble to noble endeavours.

This bi-focalism of objective involves differences of subject matter, of teaching materials and methods. It is attainable where the conceptions of the bar and of the university are not too dissimilar; but where they are widely divergent, the task of the faculty is difficult indeed. Such a divergence appears to exist here. It is not for me to take sides in such a domestic issue. I trust, however, it is not improper for me, as a former law dean, to indicate my appreciation of the abnormal difficulties your faculty is facing; and to express the confident hope that in the long run this great province will settle for nothing less than that wise blending of broad knowledge and technical skill required by a learned profession engaged in the pursuit of justice.

The second external difficulty is the nature of the problems presented to the lawyer by the changing context of the world in which he lives. Radical changes have occurred in this generation in the make-up of society and in the philosophy and techniques of government; and these have produced great diversity in the traditional tasks of the lawyer, and enjoined on him the necessity for new types of knowledge, at once more specialized and more generalized. The fact is that the lawyer must know more law, and more about law, than formerly; and must know more and more about other aspects of community life such as finance, economics and government. He is beset by a widening round of activities, an ever-increasing complexity of present problems, and the constant apparition of new problems. Thus the law faculty must realize that it cannot aim merely at equipping its students for practice as now known; for, as Dean Griswold of Harvard has said:

Neither teacher nor student should be lulled into thinking that the law [of today] bears close relation to the law which is likely to engage the attention of the student when he becomes an experienced practitioner;

and therefore, apart from subject-matter, the faculty must teach "background, method, traditions and approach"; as your faculty has done.

It is not without significance for law that other professions are committing themselves to programmes of education broader in scope than heretofore; and designed to infuse professional expertise with a more general culture than formerly.

Now, Gentlemen, I should like to invite you to consider what manner of men have been preparing you for your future tasks. First, I have no doubt that your faculty is composed of a wide variety of personalities, exemplifying different qualities and prac-

tising diverse methods. Being teachers, they are men dedicated to scholarship, who believe in the value of the subjects they espouse and the intrinsic worth of teaching itself. They are men who pray for the capacity to probe the dark spaces of the mind, and to draw out, and direct, its latent powers. Their business is communication of ideas, of principles, of methods, of goals; and they practise that business in the grip of an over-mastering urge to make others share their thoughts and see the good in what they preach. They are artists painting pictures on the mind—musicians creating harmonies out of seeming discords—actors dramatizing and vitalizing abstractions so that they become realities. They are essential to the learning process. Thus, as Newman said:

No book can convey the special spirit and delicate peculiarities of its subject, with that rapidity and certainty which attend on the sympathy of mind with mind, through the eyes, the look, the accent and the manner, in casual expressions thrown off at the moment, and the unstudied turns of familiar conversation.

Think of the classroom peopled with students, some tired, some worried, some slow, some quick, some uninterested, and some resistant. Think of the dreary apparatus of facts and rules and methods to be taught and learned. Think of the qualities of knowledge, of character, and of personality required to generate in that room an atmosphere of receptive interest in the difficult art of thinking; and to command that degree of concentrated attention without which thinking is impossible. What great qualities are needed if the teacher is to project his mind and his interest in such a way as to create a complementary desire to learn; and to convey a full understanding of the true sense of the matter in hand to his younger colleagues in the great emprise of learning. Think of teaching by discussion à la "case method". Barzun of Columbia has described this:

The instructor must be willing to go up side tracks and come back. His imagination must swarm with connecting links, factual illustrations, answers to unexpected questions. He must know how to correct without wounding, contradict without discouraging. He must be able to call on the right man for the right thing, balancing opinions, drawing out the shy and backward; keeping silent so the group itself will unwind its own errors.

I have known all types of law teachers:

The Lecturer, gaining his effects with the precision of a good pleader, and with the economy of an etcher—whilst revealing the full implications of the subject, and its relation to others, in that personal way of which Newman spoke;

The Beloved Mentor, whose very endorsement of a proposition dignifies it, and enshrines it in the memory of his devotees, even when they don't understand it, and whose integrity of mind gives coherence to his teaching;

The Phrase-maker, the passionate lover of the law whose imagination strikes off sparks which illuminate the subject for the clever, and whose brilliant impromptus penetrate even the density of the dull;

The Man of Affairs, who vitalizes academic knowledge by first-hand references to its daily application in courts and elsewhere;

The Pedestrian, who never says a memorable thing, yet somehow by his very meticulousness transmits knowledge, as by slow convoy;

The Debunker, who speaks of the great god Realism as if it were unknown to courts and legislators, and who often is a displaced person sublimating his own lack of faith in his subject by mordant cynicisms; yet who has the great virtue of stressing the difference between law in books and law in action;

The Dramatist, who revels in histrionic displays in making old bones live, and dry concepts talk the language of life and love and laughter. Of one such—who formerly graced your lecture-rooms and mine—I was recently told that within a week of his appearance in a California law school he had become a legend, and in a month, a classic, as a portrayer of the teacher's rôle.

All such types—I had almost said "characters"—have their peculiar virtues; for each has a wave-length to which the ears of some portion of the class are attuned except, of course, the truly stupid; for as to them "even the very Gods themselves contend in vain".

Whatever the variety of teachers to which you have been exposed, I am sure that they did their best for you; and in the doing left on each of you an imprint which time can never erase, and which you will learn to treasure when you have grown to full maturity. The teacher's justification is vicarious and delayed; it rests with his students and what they do with their lives. No doubt some of you will rise to great heights of professional and public achievement, and that will make them proud; but I am sure that they will take equal satisfaction in those graduates who, in quieter lives, equally exemplify the qualities proper to lawyers as servants of justice. Whatever future lies ahead I salute you as men prepared in a great tradition for a great profession by teachers who have laboured lovingly and long to bring you to this hour.

I should like to leave you with a word of reassurance and another of hope. You may have been told that your education here has been Academic rather than Practical; and you may be troubled by the seeming remoteness of some of your studies from the daily tasks of the practising lawyer. My own acquaintance with those daily tasks—and with the careers of hundreds of law-faculty graduates—has convinced me that yours has been *practical education* in the highest sense. I am convinced that your pre-occupation with the fundamentals of legal thought and legal method has provided you with permanent tools for the application of law to practical problems—and tools particularly apt when the text of the law and the nature of those problems suffer changes—as indeed they will.

I trust that in God's own time you will mount honourably to success; and that in the process of applying your knowledge and skill to social needs you may attain to that high degree of *interior happiness* which comes from the expert discharge of great responsibilities.

The Law

But that is not all. What a subject is this in which we are united—this abstraction called the Law, wherein, as in a magic mirror, we see reflected, not only our own lives, but the lives of all men that have been! When I think on this majestic theme, my eyes dazzle. If we are to speak of the law as our mistress, we who are here know that she is a mistress only to be wooed with sustained and lonely passion—only to be won by straining all the faculties by which man is likeliest to a god. Those who, having begun the pursuit, turn away uncharmed, do so either because they have not been vouchsafed the sight of her divine figure, or because they have not the heart for so great a struggle. To the lover of the law, how small a thing seem the novelists' tales of the loves and fates of Daphnis and Chloe! How pale a phantom even the Circe of poetry, transforming mankind with intoxicating dreams of fiery ether, and the foam of summer seas, and glowing greensward, and the white arms of women! For him no less a history will suffice than that of the moral life of his race. For him every text that he deciphers, every doubt that he resolves, adds a new feature to the unfolding panorama of man's destiny upon this earth. Nor will his task be done until, by the farthest stretch of human imagination, he has seen as with his eyes the birth and growth of society, and by the farthest stretch of reason he has understood the philosophy of its being. When I think thus of the law, I see a princess mightier than she who once wrought at Bayeux, eternally weaving into her web dim figures of the ever-lengthening past—figures too dim to be noticed by the idle, too symbolic to be interpreted except by her pupils, but to the discerning eye disclosing every painful step and every world-shaking contest by which mankind has worked and fought its way from savage isolation to organic social life. (Oliver Wendell Holmes, Jr., *The Law*, in *Collected Legal Papers*)