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The Study and the Practice of Law

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THE STUDY AND THE PRACTICE OF LAW*

The administration of justice is said to be the noblest profession of man. This is so because of the exalted purposes to be accomplished, the essential service to society, and the ample opportunity afforded for the fullest development of capacity and character. The incessant labor involved in following the law demands health and strength in its votaries; and the intellectual development demanded by the work to be done, as well as the temptations always to be resisted, connects the profession with the transcendent interests of mankind. The supreme trust commonly reposed in lawyers presupposes a nice sense of honor, and the habitual loyalty of the profession to its obligations reflects the high character of the calling. Moreover, the security of society depends upon the constancy and intelligence which must characterize the administration of justice. "It is the ligament which holds civilized beings and civilized nations together." The fate of free institutions is inseparably linked with the success of a legal order. Consequently the greatest intellects and noblest characters may be devoted unreservedly to it.

The practice of law requires a mastery of judicial administration. Prof. Langdell, in the preface to his "Cases on Contracts," notes: "Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever tangled skein of human affairs, is what constitutes a true lawyer, and hence to acquire that mastery should be the business of every earnest student of the law." The process of study and the principles of practice are correlated, but involve inverse methods. In the study of the sources of the law, and the reported cases where its principles are embodied, the particulars are to be ascertained and the living principle extracted.

Whether one system of instruction or another be selected, the object and the operation remain the same. Whether elemental doctrines are first learned and then studied as applied in the cases, or cases consulted first and the fundamental principles derived therefrom, the search is the same and the purpose is similar. In the practice of the law quite the opposite

*Address to the Law Students of the State University at Lexington, Kentucky, May 12, 1930.

course of action is necessary. The particulars of the case in hand must be gathered and classified and the governing principles, by appropriate procedure, then applied to enforce the lawful rights of the party concerned. Analysis always precedes constructive work. It is in both, however, that the reasoning power, so constantly necessary in the study and practice of law, is developed and disciplined. The sources of the law are written and unwritten, but in order to ascertain and apply the correct principle, or to find the analogy when an express principle is not available, resort to reason must be incessant. It is in such sense that the common law is defined as reason dealing by the light of experience with human affairs. Law is essentially reason, instructed by experience, applied to practical exigencies. The power of logic must not be under-estimated, but it is a mere method or instrumentality of reason. Experience and expediency are the great law makers. Indeed an accepted definition of law described it as logic and reason enriched by experience working out justice among men.

Constitutions and statutes are binding pronouncements, but the terms in which they are expressed have a background and history which must be known in order that the written words may be correctly appreciated and accurately applied. The purpose of teaching, I make bold to assert, is not merely to store in the mind of the student definitions and instances, but its great object is to teach how to study and to excite in the student a love of study. Judge Sharswood, a great lawyer and teacher, accepted that theory. After mentioning a large number of works on the main subjects of the law to be studied, he said that Blackstone and Kent should be read over and over, and proceeded:

"I believe that the course I have thus sketched, if steadily and laboriously pursued, will make a very thorough lawyer. There is certainly nothing in the plan beyond the reach of any young man, with ordinary industry and application, in a period of from five to seven years, with a considerable allowance for the interruption of business and relaxation. One thing is certain,—there is no royal road to Law, any more than there is to Geometry. The fruits of study can not be gathered without its toil. It seems the order of Providence that there should be nothing really valuable in the world not gained by labor, pain, care or anxiety. In the law a young man must be the architect of his own character, as well as his own fortune."

Professor Pomeroy, another great teacher, said: "The central principle of all true education, whether professional or

general, is that the student must be taught and accustomed to acquire for himself." The methods of education may differ, but the end to be attained is always the same. It is the creation of character, which is the fruit of philosophy and conduct. The great and enduring need of the time, indeed of all times, is the development of the best there is in our human material. Education that pays no heed to the making of character is worse than wasted. A criminal educated vastly increases the burdens and difficulties of society. The abiding virtues of justice must be made an essential ingredient of the makeup of its ministers. Mr. Justice Bradley, in 1865, aptly expressed the true ideal:

"The law is a science of principles, by which civil society is regulated and held together, by which right is delimited and enforced and wrong is detected and punished. Unless these principles are drawn from the books which a student reads, and deposited in his mind and heart, his much reading will be but a dry and unprofitable business. On the contrary, if these principles are discovered beneath the dry husks of the textbooks and reports, if they are extracted, mastered and retained, it will not be so much the quality of books studied, as the success with which this digesting and assimilating process is pursued in studying them, which will make the great and successful lawyer."

Whatever the method of approach, the object to be attained is the same and the problems to be met are not different. The object of study is to acquire knowledge of the law and its administration, in order that the student may make of himself a successful lawyer. To be a successful lawyer two things at least are essential: (1) a thorough knowledge of the law and of the people and things affected by the law, and (2) character and personality worthy of the task. A study of the law involves the acquisition of much information. Indeed, the entire range of knowledge may fall within the compass of the lawyer's work. He must know the common things and the uncommon things. He must understand the primary elements of medicine, chemistry, commerce, mechanics, agriculture, business, in fact, every activity in which men engage. His knowledge must be gained by constant observation, ceaseless application, and an insatiable curiosity. As said truly by Professor James:

"As we become permanent drunkards by so many separate drinks, so we become saints in the moral, and authorities and experts in the practical and scientific spheres, by so many separate acts and hours of working. Let no youth have any anxiety about the upshot of his education whatever the line of it may be. If he keep faithfully busy

each hour of the working day he may safely leave the final result to itself. He can with perfect certainty count on waking some fine morning, to find himself one of the competent ones of his generation, in whatever pursuit he may have singled out. . . . Young people should know this truth in advance. The ignorance of it has probably engendered more discouragement and faint-heartedness in youths embarking on arduous careers than all other causes combined."

Everything in the life about us is affected by the administration of the law and the whole fabric of society is concerned. To know the meaning and application of a principle it is necessary to know the conditions and circumstances of its origin and operation. The student must know his books and his cases, but he must know also the people and the things with which they deal, as well as their relations and characteristics. Dr. Cadman said recently over the radio that he had never possessed as much knowledge about anything as he needed to carry on his work, and that he was constantly seeking information from every source available to him. This is everlastingly true of the law student and it is essential for him to consider everything he learns in its relation to the principles of law. The study is never ended, but is perpetual, and it is inseparably united with the practice. Yet no amount of knowledge can be of any possible value unless its use is understood. The law regulates and permeates every activity and transaction. In order that the application of the law may be understood it is impossible for a student to know too much of practical affairs. The lawyer may learn much from the books, from clients, from many sources, but after all, it is the personality of the lawyer that gives character to his work and stability to his career. Faith is the great motive power and no man realizes his full possibilities unless he has the deep conviction that life is eternally important and that work well done is a part of an unending plan. It is a mistake to assume that lawyers should study only the law books. They should not be caged by their calling. The inexpressible riches of literature, and the incalculable advantages of practical knowledge should be available to them and form a part of their daily lives. A power of spiritual initiative, and an intuitive acceptance of the eternal verities, with a natural affinity for the right, must ever be essential qualities of a superior lawyer. In the practice a lawyer always finds need for more knowledge, more authority, more information, than he ever has at hand. Habits

of observation and inquiry are a necessary part of the lawyer's equipment. When he comes to try a case he may have opportunity to confer with his own witnesses and be advised as to the best manner of obtaining facts from them, but he will have no opportunity to confer with his adversary's witnesses, and what he obtains from them will have to be captured on the spur of the moment. He may have to judge with haste, almost by intuition, the accuracy of testimony. His opponent may prove facts that would win the case if he but knew how to use them. On the other hand one may destroy his own case by eliciting facts that should have been allowed to slumber. There is no person so humble, but he may supply something that will prove of value at a crucial moment. The lawyer, when he engages in the practice, must first understand how to meet people and how to inspire confidence in his ability to advise correctly and to serve successfully. His personality will enter into the impression he makes. The one way to inspire confidence and respect is to be worthy of both. If a man is sincere and genuine it will shine forth in his bearing and conduct on all occasions. In advising clients it is necessary that the lawyer should know the business which he assumes to discuss. He may have to prepare written opinions in many instances, and will certainly have to prepare many legal documents, which is the daily grind of the lawyer's life. In this respect literary skill and the correct appreciation of legal terms and their background is necessary in order that the exact meaning may be conveyed. And then comes the preparation and trial of cases, the dealing with courts and juries, the protection of your client from errors of the court or mistakes of the jury, acts in emergencies—all demanding preparation, aptitude and alertness. The trial of cases is the lawyer's great forum and his avenue to the public. The first step is a perfect preparation so far as possible. He must be in possession of the facts and the law that are involved in the case. It is necessary to see that the pleadings are correct and adequately set forth the claims upon which the asserted rights and defenses depend. It will be seen at once that there is involved an endless industry, and each case well prepared and well tried helps to form habits that become a part of the practitioner. It is eternally true that there is no excellence without great labor,

but the labor, if one of love, brings satisfaction not otherwise attainable. Alexander Hamilton said:

"Men give me credit for some genius. All the genius I have lies in this. When I have a subject in hand I study it profoundly. Day and night it is before me. I explore it in all its bearings. My mind becomes pervaded with it. Then the effort which I have made is what people are pleased to call the fruit of genius. But it is the fruit only of labor and thought."

Edison expressed the same idea in more succinct form:

"Genius is one-tenth inspiration and nine-tenths perspiration."

The reactions and results of industry and devotion to principle will be traced in the character of the lawyer, and as his practice grows and his adherence to principle is established, he will find his prestige, power and influence expanding with the perfection of his character. It is impossible for a lawyer not to be benefited by the constant contemplation of justice and fair dealing. Standing for the right and advocating it augments the powers of the advocate. Fellowship with great ideas is a source of substance to the soul. Great good may be promoted by a just and fair man in dealing with clients, with witnesses, with courts and with juries. True principles can be inculcated and fair dealing encouraged. The lawyer must remember that his character is the fruit of his thinking and his conduct, and just in the proportion as he is loyal to a sense of duty, he will be compensated by its rewards. The obligation of the lawyer is all embracing. His first duty, of course, is to his country and its institutions—to justice itself. His duty to his clients is not and can not be inconsistent with his duty to the law. He owes them fidelity and service, but not subserviency. They are entitled to their rights, according to the law of the land, but no lawyer ever owes to his client any duty to subvert justice in his behalf.

Edmund Burke expressed the thought that a disposition to preserve and an ability to improve our institutions were the essential requisites of a statesman. The observation applies equally to the lawyer, and while he must strive to preserve the established institutions, it is his duty always to seek improvement and to lend his aid for the reform of abuses, which, like the poor, we have always with us. The weight of the influence of a true lawyer is always on the side of right. His stand must

be for truth and against falsehood; for virtue against vice; for purity against corruption, and for patriotism against lawlessness. Anyone willing to make the sacrifice, and to put into it the exertion and devotion required, is bound to realize that the administration of justice truly is the noblest profession of man, both in its incidence and its results. His work, if well done, will bring him sufficient honor and economic security, establish him in society with the most worthy, and connect him "in name and fame and character with that which is and must be as durable as the frame of human society."

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