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On the Study of Law: An Address at the Opening of the Law Department of the University of Michigan, October 3, 1859

James V. Campbell

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BY

JAMES V. CAMPBELL,

One of the Justices of the Supreme Court of Michigan, and Dean of the Law Faculty.

Ann Arbor:
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IN pursuance of the plan originally prepared for the organization of the University of Michigan, a Law Department is now created. It has been deemed proper, as an inauguration of this Department, that some explanation should be given of the position it is expected to occupy, and of the particular objects it is designed to accomplish, or aid in accomplishing. As one of the Law Faculty, I have been entrusted with this duty; and I shall ask your attention to a retrospective glance at the origin and design of the University itself, as tending to elucidate it. For, although this Department is now for the first time organized as a working part of the main Institution, its plan is not of recent origin, and it has always been contemplated as necessary to complete the round of University studies.

This State is a part of that territory which belonged to the old Confederation, before the American Congress received power to legislate on

any subject within the States themselves; and before the Constitution had defined the relative positions of the States and the General Government. The original territories were the only places subject to the local jurisdiction of the Confederated Congress. Having just recovered independence, they were disposed to act with great liberality towards a region which, under their fostering care, was expected to become a nursery of independent States, fit for union with the old Colonies which had earned their freedom so hardly. The necessity of enlightenment was recognized as of the first importance, and liberal provision was made for it. One section of land in each township was sacredly set apart for the use of schools; and in the Ordinance of 1787 it is declared that "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

As soon as the system of public surveys was completed, and before the lands were actually surveyed and brought into market, an additional appropriation of one township of land was made, for the support of a seminary of learning within this Peninsula. The mode of disposition of this land was left to be provided for, whenever the local authorities should establish the Institution.

In 1817, an act was passed by the Governor and Judges (then constituting a legislative board),

for the incorporation of the Catholepistemiad, or University of Michigania — an act containing provisions for organizing many *didaxiae*, or professorships, under very uncouth names, and disfigured by a barbarous pedantry which has brought ridicule upon the whole scheme. There was, however, nothing ridiculous in the substance of this law, which was not only a comprehensive and enlighted plan for a University, in its enlarged sense, but was, in many respects, in advance of the times, and in some in advance of our own period. There is nothing in our present legislation which manifests so exalted a sense of the duty of the State to furnish its citizens with the highest, as well as the more common, facilities for education. This University was the predecessor of the present one, which is legally identical with it, but has been modified by subsequent legislation. It was formally recognized as a part of the Government itself. Its Professors received commissions under the great seal, and their salaries were paid out of the treasury. It was to be supported by a fund raised by general tax, amounting to fifteen per cent. of the whole territorial taxes, which was to be kept as a separate fund in the treasury, and augmented by monies raised from lotteries, as well as by the original government appropriation of land. The tuition fees were hardly more than nominal; and those unable to pay this small expense were entitled to free admission, upon evidence of such

inability. The University was made the real as well as nominal head of the school system, with power to establish inferior colleges, seminaries, and schools, at pleasure. The branches taught were to comprehend all the departments of knowledge usually embraced within the limits of the most enlarged and exalted systems of education. As a recognition of the duty of the State to support, by its own means, adequate institutions of learning of the highest grades, and as a comprehensive plan of universal education, the law incorporating the University of Michigania will survive the ridicule which may have justly attached to some of its peculiarities, to receive honor and admiration from future ages. Pedantry may be well excused, when it accompanies the enlarged views manifested in this uncouth law.

In the same year in which this law was adopted, an appropriation was made of certain lands to the new University, by an Indian treaty, the chiefs who made it anticipating that some of their young men might desire a college education. Other donations were made from time to time; and, in 1826, Congress increased its appropriation to an amount of land sufficient to make up two townships. This Congressional fund forms the principal source of revenue of the present University. The original charter was modified in 1821; and in 1837 it was re-modelled again into a shape which has not since been essentially changed, except as

regards the construction and election of the Board of Regents, and the enlargement of their authority. The act of 1837 provided more specifically than the previous statutes for the organization of three separate Departments, one of which was to be a Law Department.

The Department of "*Literature, Science, and the Arts*" was necessarily the first one organized, as embracing the course of studies required for general culture, and, so far as it was confined to undergraduates, containing the whole scheme of ordinary scholastic instruction. The Medical Department has also been in successful operation for several years. No one now doubts the necessity or propriety of having both these Departments kept up in the most thorough and efficient manner. A free Law School, however, is something novel, in this country, at least; and therefore it may be desirable to give some reasons why it has been deemed wise and expedient to establish it.

The fact that the University has been designed from the outset to furnish facilities for complete education, and that the Law Department entered into that design, would be a sufficient reply to any questions on this matter; for good faith would carry out such a trust, without reference to any notions of its original expediency. But the plan rests upon well founded merits of its own, and originated in the wisest views of public utility.

The principles which lie at the foundation of all teaching, from the earliest rudiments to the highest attainments of science, are as applicable to this as to other branches of knowledge; whether we regard those principles which enter into the work of imparting knowledge, or those which justify its utility.

The propriety of encouraging any branch of education is dependent upon the practical results which will flow from it. The first question to be put in every case is, What substantial result can this accomplish? and the second is, By what method can this be made best to attain that result? Education is not an idle and aimless work in any sense. It is always carried on with a design; and the differences which arise among men concerning the value of different systems are not always, or often, differences concerning the end, but are generally confined to the means.

The object of a University, which embraces within its sphere every department of knowledge, is to afford opportunity for training in all things which go to make a perfect scholar. And, were its means unlimited, such would undoubtedly be the aim of this Institution. Up to a certain point, in our lower schools, every pupil must go through the same routine. The rules of language, and the elements of mathematics and mechanics, are essential to every one, whatever may be his destination in life. But as education progresses, the

lines of study diverge; and the further the student proceeds, the more necessary it is for him to direct his especial attention to those branches which will best fit him to attain success in the chosen sphere he has determined to fill. True wisdom will dictate that the foundation should be made broad, and that the preparation for any special department should be general and liberal. But when this general preparation is complete — so far as teaching can complete it — the attention must be devoted still more earnestly, and with the aid acquired from previous discipline, to those studies which bear more directly upon the pursuit which is to occupy maturer life.

There are many pursuits, advancement in which can not be attained by any mere teaching or study. In the mechanical departments, nothing can be taught outside of the factory except the general principles of mechanics; the further lessons must be had where the work itself is carried on. In Agriculture, the bounds of outside study and preparation are similarly limited; and the farmer must learn the practical application of his chemical, or other knowledge, upon the land which he tills. In other pursuits, however, and especially in Law and Medicine, although skill and advancement must, in like manner, be obtained from actual practice, yet a longer preparation is needed of reading and study, than in the rest. Although both are practical pursuits, relating to the most

important human interests, they rest upon principles of more subtle application than those, and demand a different kind and a longer course of preliminary mental discipline. And for this reason, although lawyers and physicians frequently receive their professional instruction from private teaching, yet their teaching is substantially the same as in schools; and schools have always existed for teaching those sciences. An apprenticeship is necessary for complete education in any art or science; and this is but a part of that apprenticeship.

There are persons who deny the necessity of any high standard of general or professional education, and seek to prove their correctness by referring to the numerous instances of eminent success attained by those whose education has been more limited. That such instances exist, and that they are by no means few in number, is true; and every sensible man must rejoice to see them. Were it not so, the men of past generations must have been far behind the present; for the means of obtaining a liberal education are not even now as free as they should be, and but a few years ago none but the comparatively affluent could compass them. But the fact that these successful men are found most actively engaged in promoting everywhere the advancement of education, in its highest and broadest sense, is the best evidence of their own views of its utility.

They have not attained their success without hard labor and stern discipline; and in most instances they have added to it by the resources of minds more than usually active, and by strong wills not yielding to difficulties or discouragement. But it must be remembered that the world is not made up of uncommonly wise or uncommonly strong men. The design of education is to enable every one to use such faculties as he possesses to the best advantage. And it is only by looking at the influence of sound and thorough training upon average abilities, that we can determine its true value.

When we leave the higher ranks of any profession, or any business, and examine into the condition of those who, with respectable talents and ordinary industry, make up the great body of useful citizens, we have no difficulty whatever in recognizing the value of training and discipline. The well trained lawyer, when a point is presented to him, naturally and habitually refers it to its place within general rules and established principles, and detects and exposes sophisms by a natural and easy process, suggesting itself, and not requiring much labor to elucidate it. He presents his views, whether forcibly or not, in a methodical and easy manner, and the Court can readily apprehend his drift. His work is performed with no immoderate labor, and his judgment is not apt to be wayward or capricious.

He tries questions by general principles, and is not easily led astray by sophistic parallelisms and inapplicable analogies.

An untrained lawyer, of merely moderate ability, has a very difficult task to accomplish; and it is not until he has gone through a practical course, longer and more tedious than any preparatory one, that he can achieve success, or even moderate respectability, in his profession. Such men are generally in great danger of becoming case-lawyers, unable to test the correctness of any question except by some decision which they conceive to be precisely parallel, and unable to extract the principle on which the parallel case was decided. As two precisely similar cases can not easily arise, it happens, of course, that very often the difference in facts should produce a difference in result. To a sound lawyer, the principle to be deduced from a decision is its only value, unless — which seldom happens — it is a merely arbitrary precedent. And any one who has had experience in courts and practice will acknowledge, that there is no more crying evil in the law than the misapplication of precedents, and no greater nuisance to the administration of justice than a mind incapable of deducing legal principles. Rightly applied, the decisions of able courts have built up the law on a sure and sound foundation, to the prosperity of commerce, industry, and property, and to the safety of every

well ordered community. Wrongly applied, and wrested from their true meaning, the best decisions have been used by pettifogging villains as texts for every species of tyranny and injustice. But if they could not find honest and well meaning men, unable readily to analyze these precedents, and thus easily deceived by their sophistry, very little mischief could ensue. It is not, however, in this way only, that an untrained lawyer is debarred of success. His chief obstacle is found in a want of method and order in thinking and in expressing his thoughts. This renders it very difficult for him to attain knowledge, and disqualifies him for success in the conflicts of the bar, where readiness and clearness are of the first importance. In appellate courts, where preparation may be longer and more deliberate, this difficulty of slowness in preparation is not so embarrassing, perhaps; but a lawyer who can not make his way in the ordinary trials of causes, will not be apt to obtain opportunities to argue them on review, and will not, if he obtains such opportunities, contribute much to the success of his client, or materially relieve the Court in its investigations.

Habits of mind must be formed; and they can only be formed by some regular and continued training. And it must either be the generous and easy training of early life, when the faculties are pliant, and the mind, free from care,

is able to act without bias or obstacle; or it must be the rugged and dangerous training of professional labor, where every advance is at the cost of infinite toil, attended often with mortifying mistakes and painful exposures, which render the life of the aspirant any thing but a pleasant one. And not the least of his trials is the sight of those who excel him neither in talent nor in energy, advancing rapidly beyond him, with no greater labor, but with the advantages of a better training, and a more entire command of their faculties. No man can succeed in life without great and constant toil; but the success of any effort depends very much on the skill with which every exertion is made available.

It not only concerns the State that every one should have all reasonable facilities for preparing himself for any honest position in life to which he may aspire, but it also concerns the community that the Law should be taught and understood. The general studies pursued in the University are mainly designed as preparatives, and are not expected to supply the mind of the student with knowledge to satisfy him for life. They are meant to teach him how to acquire and use learning, and to give him the habit of study, and of thought and reasoning. With the habits acquired, he may forget much that he has learned, and yet retain the best part of his education. But in the study of the Law, as in that of the

other applied sciences, it becomes more important to retain what is learned; and training is not the only advantage to be derived from it. The principles of the Law become to its future study and practice what the alphabet is to reading, or what the elementary rules of mathematics are to its advanced branches. The principles must be mastered, and the student must learn to apply them to the exigencies of human affairs, and the guidance of human conduct. But, unlike the conventional rules which supply the elements of other knowledge, the principles of the Law are generally based either on moral laws, or on rules of expediency, deduced from the wisdom and experience of ages. And, while some rules are not easily referred to their origin, all, whether conventional or not in their nature, derive interest and importance from their relation to human conduct. For if that which is merely speculative in philosophy is regarded as invested with the dignity of the immortal faculties with which it is concerned, we can not look down upon a science which deals directly with the welfare of the State, and regulates all the external duties of its people. It would seem to require little reasoning to show the importance of some knowledge of these principles to every one who is able to acquire it.

While the object of founding this Department is chiefly to provide some assistance in the training of good lawyers—an object the importance

of which will be referred to presently; yet such is not its only object. When the law student leaves the University, he leaves it to pursue for a lifetime the course which is here commenced. But every year, hundreds of young men leave this place, some to preach the Gospel, some to heal the sick,—all to become citizens, and to take their place as active members of an active community. In whatever sphere they move, and whatever course they pursue, they live under the protection of the Law, and they are governed by the restraints of the Law. It measures their rights, and it redresses their wrongs.

Sir William Blackstone, when commencing his career as Vinerian Professor at Oxford, delivered an opening discourse upon the Study of the Law, which is one of the most complete essays on that subject to be found in the English language. Its design was to impress upon the young gentlemen of that University the propriety of introducing the study of the Law as a part of the University course, and the necessity of an elementary knowledge of it to every one intending or expecting to take any active place in society. With a beauty of style and clearness of expression which can not be surpassed, he shows with invincible reasoning how unwise it was for those who, by birth and position, were to be the legislators, jurors, and justices of the Kingdom, and who had estates to dispose of, and large

interests to manage, to be ignorant of the laws they were to act upon and administer, and under which their property was to be conveyed or devised. A more beautiful vindication of this science has never been written; and it is worthy of the perusal of every scholar.

But the reasons which apply in favor of introducing the study of the Law among the scholars of an English University, have much greater force applied here. Every man here who inherits the condition of citizenship, takes with it the right of voting for every elective officer in the State or National administration, from the school district and township officers to the Presidential electors. Every one is liable to perform jury and military duty. Every one is eligible to office, judicial, legislative, and executive, of every grade. There is not an office in the State in which serious legal inquiries may not frequently arise. The inspectors of elections are called upon to decide upon the right of suffrage of each voter. The whole financial interests of the State depend upon the correct action of the township officers. Local boards set in motion proceedings involving the very highest prerogative of sovereignty, — the taking of private property for public use. The justices of the peace, in addition to important criminal powers, decide all controversies of small pecuniary amount, involving frequently the most difficult and complicated legal investigations. The

county boards exercise extensive legislative and judicial functions without appeal. In all of these matters, public and private rights are constantly involved and discussed, and ignorance of the Law has frequently led to results deplorable and alarming. In the administration of criminal law by ignorant officials, there is room for more immediate and visible evils; and in the history of this State, in more than one instance, that ignorance has led to unlawful violence, and the shedding of innocent blood.

The brief tenure of our legislative bodies multiplies greatly the number of those who are called upon to participate in the duty of forming our body of statutes. General intelligence and good sense have been found, by sad experience, not to compose all the elements necessary for sound legislation. As every man is called upon to vote for or against each statute which is before the legislature, every man should understand and fully appreciate the effect of what he votes upon. It was never the intention of our Government that the responsibility and duty of legislation should fall on a minority of the members—still less upon an unknown minority; and yet such is frequently the case. Laws are passed without a knowledge of existing legislation on the same subject. Laws are passed in ignorance of the legal effect of the language used. And, what is worse, it is a rare occurrence for a session to take place without the

enactment of provisions rendered void by some express clause of the Constitution. This could never be done, if each member acted intelligently and deliberately, upon every law and every part of a law, with the most ordinary knowledge of the elements of legal interpretation. It is undoubtedly true that other difficulties beyond ignorance of the Law embarrass legislative bodies; but an elementary knowledge of it would tend not only to make more perfect the laws actually passed, but to restrain action upon any law until its effect is fully appreciated.

But, apart from the participation in public duties, the condition of our people renders some knowledge of the Law necessary in their private concerns. There are few men in the country who are not in the habit of making bargains of various kinds, without the intervention or aid of legal advisers. These bargains embrace every variety of transactions, including contracts executed and contracts executory, upon all subjects, and referring to all kinds of labor and property. In such matters the shrewd business man, who knows precisely the legal effect of his agreements, has a great advantage over his less informed associate; and a great majority of the litigated actions which burden our courts, and vex our citizens, spring from honest misapprehension on one side, and often on both sides, of the real rights and liabilities of the parties litigant. Where parties, distrustful of their

own skill, seek aid from the neighboring magistrates, the same difficulties occur with not much less frequency.

Some of the most unfortunate difficulties which arise, relate to the transfer and enjoyment of real estate. Although our laws have wisely removed all obstructions to the free disposition of lands, yet there are incidents to this species of property which render it much more important than personal property. Apart from pecuniary value (and its permanent character renders it the most stable representative of wealth), its very use is so associated with all of our best interests and enjoyments, that no one can disturb the title of an old homestead without exciting a degree of sorrow and indignation, aroused by no other encroachments on the rights of property. The facility of dealing in lands has rendered it easy for every one to procure some interest in the soil; and the great bulk of our country population own the title to the farms they occupy. And yet every lawyer of much experience knows of many instances in which the titles of these occupants are invalid; and the invalidity is of such a nature that a very moderate degree of skill, in the persons who drew the papers or examined the title, would have prevented any such difficulty. Our land laws are simple enough, but they require accuracy in their administration; and those who are not very familiar with them are very apt to fall into grievous mistakes.

Commercial Law had its origin in the increasing claims of mercantile affairs to importance and consideration. It has grown up with little aid or regulation from statutes, and is, like the early Common Law, mostly unwritten, and found only in decisions and text books. Its general principles are derived from the necessities of Commerce in its broadest sense, and its arbitrary rules had a similar origin. In the present condition of things, when business is not confined to local traffic, but extends into sister States and foreign countries quite as generally, no one can be regarded as fit to undertake a responsible commercial charge without some knowledge of the laws which regulate it. This knowledge can not be obtained in the counting-room. The forms and relations of business are so rapidly changed and modified by the new discoveries in science, and the enlarged means of communication, that, unless already possessed of a competent knowledge of general principles, the merchant must either fall behind the times, or learn by a very expensive course of lessons from experience. Commercial colleges have become a recognized and important means of preparation in mercantile habits; but, unless they provide for a thorough training in the laws of business, they omit a most important branch of instruction, which is not compensated by any routine training. Mercantile law is as necessary to be understood by a thorough business man, as navi-

gation by a shipmaster. It is very true that merchants can find legal advisers in case of doubt, but the most serious difficulties often arise where none were anticipated, and when advice comes too late.

The laws applicable to Wills and Descents have been much simplified; and every one should have some knowledge of them. Wills are often drawn in terms which would never have been used if the testator had been rightly informed. It is a very common thing for those who desire to dispose of their affairs themselves, to ascertain the necessary formalities, and then draw their own wills. These instruments often prove abortive, so far as the real design is concerned, and yet stand in the law because having a clear and legal meaning. Sometimes they avail in part, but fail where perhaps a failure would have been most dreaded. There is a disposition manifested by many persons to confide in their counsel, in preparing their wills, no more than they themselves deem essential; and no advice avails to draw out any further information. This is one of those unaccountable weaknesses which every practitioner sometimes encounters, and which render legal services of little avail. It seems to be without remedy, and its ill effects can only be avoided by more general familiarity with the Law; which is the more important in this class of cases, because the death of the testator puts all his mistakes beyond the reach of

correction. Those purchasing estates from the supposed heirs of intestates are liable to the most serious errors as to the amount and the extent of their rights. In all cases where the title falls through collateral lines—in spite of the plain provisions of our statutes—experience has shown the most singular carelessness to prevail. Floating notions obtained from the laws and customs of the States from which they emigrated, or ridiculous fables which have circulated among wondering gossips until their origin becomes inscrutable, are acted upon by our citizens, intelligent as well as stupid, with the most implicit confidence. There is but one means of extirpating these evils. The foundation of true notions must be laid with early education, and the first views received upon such subjects must be correct ones. Village oracles are always supposed to know more on all subjects than those whose lives are devoted to their study; and until the general sentiment is corrected, by early information, men will rush into ruinous mistakes, and blame any thing and every thing for their misfortunes, sooner than trace them to their true cause.

There is much in every law course which is entirely intelligible to every class of students, and there are many subjects (of which those alluded to are specimens) which commend themselves to every intelligent mind as important to be understood by all. The Constitutions which form our

common safeguards from illegal encroachments, — the laws affecting trade and ordinary contracts, the laws regulating the enjoyment and transmission of estates, and the penal code — are all of general and individual concern. It is no ground of relief in a court of justice, to assert that an act has been done under a mistake of law. The contract, which has been made with a knowledge of all the facts bearing upon it, will be enforced, notwithstanding such mistake. It is no defence to a criminal charge that the accused did not know that his act was made penal by the law of the land. If he has done wilfully and intentionally a forbidden act, he is not shielded because he did not know it to have been forbidden. And this rule of law is not an unreasonable one. Society could not exist without it. The well disposed can not have their lives and property left to the uncertain tenure of another's ignorance.

If long usage had not blinded us to the appearance of things, it would seem very strange that so many otherwise well educated and intelligent persons, mingling freely in the world, and aware of what is going on around them, should be ignorant of the common principles of law which concern them in their daily acts and familiar interests. The student is presumed to know the distinguishing features of all Governments, and especially the great characteristics of British and American institutions. He is expected

to be able to form an intelligent judgment upon the merits of the various questions which have given rise to great movements and revolutions. And yet when the same questions arise in our midst, and the great principles of legal right are invoked by our own citizens, no thought springs up suggested by that old experience, and the profoundest principles pass unheeded. Our legal duties and privileges, an assurance of which should form a part of our very being, always suggesting the rule whenever the rule applies, are not learned at all — much less indelibly written in our hearts.

This is not the rule which we apply to other matters. An empiric who attempts to minister to the diseases which assail our bodies, without a careful preparation of diligent study, can not escape the well merited contempt of the community. The workman who, without some apprenticeship, undertakes to pursue the calling of a skilled mechanic, is disgraced as an ignorant pretender. We employ for our aid, in supplying the common necessities of life, those who are qualified by something more than natural gifts to execute the work entrusted to them. But that which is our only safeguard against wrong and oppression, — that which determines the temporal welfare and prosperity of ourselves and our children — that which defines the boundaries between the law-abiding citizen and him who disregards the laws — is left to be learned piecemeal and

hap-hazard, and in many things not learned at all. The citizen may be ignorant of the Constitution which governs the State, and which received its force from his vote. The legislator may be ignorant of the laws he attempts to amend, and of the legal effect of those he is actually voting upon. It is not wonderful that laws are passed which go utterly disregarded; but it is wonderful that, with such anomalies, in a free popular government, provision has not long since been made for a more complete elementary training in legal principles, in every academy in the land.

In recognizing and establishing a legal course as a proper supplement to a general University course, the authorities of this State have introduced no system foreign to the rest. The duties of a citizen can never be too fully inculcated. Practical education is designed to make men fit for their duties. It should, so far as may be, fit them for all their duties. Having passed through the preliminary stages of study, and received that mental training which a literary and scientific course is so well adapted to give, the young men will be able, with speed and discernment, to master such of the branches of the Law as are necessary to their information as prudent citizens; and the time which is spared for this purpose will not in after life be considered as unwisely spent.

To another Department of the University the

facilities for obtaining some legal instruction will be of great utility. The subject of Medical Jurisprudence is one which may be regarded as common ground for the Law and Medical schools. No lawyer can instruct law students in the strictly medical part of that science, and few physicians or surgeons can teach medical students in the legal branches of it. With the two faculties working side by side, the two classes of students can obtain much useful information; and if a plan can be devised for parallel and joint instruction, to some extent, in the particular subdivision of legal medicine, the advantages will be greatly increased. The advance of science has done much, and is doing more, to aid the Law by its discoveries. In criminal law, the fearful increase of death by subtle poisons has been the occasion of calling the attention of the medical profession to perfecting new and more accurate tests for the detection of the deleterious substances employed; and the celebrated case of the murderer PALMER has excited fresh investigations, which have led to very satisfactory results. But in civil, as well as criminal cases, medical testimony is often of the utmost importance. The whole subject of insanity, and its kindred topics, is, to a great extent, connected with medical science. The temporary as well as permanent effects of peculiar disorders and remedies upon the reasoning powers, are often governing facts in the decision of important causes. It can not

have escaped attention, however, that many medical witnesses, in giving their testimony, are exposed to serious annoyances, owing as much to their inadvertent disregard of the legal rules of evidence, as to any want of courtesy in their examiners. The rules which determine when opinions may be received, and when they must be excluded, and those which apply to hearsay testimony, are, to the uninitiated, serious stumbling blocks. Every one sees the propriety of demanding the sanction of an oath or judicial affirmation to every statement which affects the property or interests of a party litigant; but every one does not, unless his attention is rigidly turned to it, distinguish in his statements between those things which he has heard from what he deems reliable sources, and those things which he has seen or knows from the evidence of his own senses. Nor does he, in expressing opinions, always reflect that there may enter into the grounds of those opinions disputed facts and unsupported assumptions. Medical testimony has had much discredit thrown upon it by the somewhat reckless way in which careless witnesses have given opinions on imperfect grounds; and the blame has sometimes been as undiscriminating as the obnoxious evidence. But when clear headed and accurate medical witnesses appear upon the witness-stand, and testify with care and precision, they have always been regarded as important, if not governing witnesses, upon the

matters to which their attention is turned. There can be no sort of doubt that an intelligent physician, by a little time spent in studying such of the rules of evidence as are most likely to apply to medical testimony, will not only qualify himself to testify intelligibly and accurately, but may become of great public service in aiding the correct administration of justice. He sees what no other disinterested observer can see, and understands what to those around him may be entirely unintelligible. There are rules of evidence, the study of which will aid him much in knowing how and what to observe. For that which is sufficient for his use as a physician, is not all that an acute observer can see, in those instances where the seeds of litigation are sown. And when he learns to look at circumstances with the observation of a lawyer as well as of a man of science, his eyes may be opened to see through many mysteries. It often happens, in farming districts, that a physician, who sees the urgent necessity that a sick or wounded person should settle his worldly affairs without delay, ascertains that no competent assistance can be obtained for that purpose before it is too late. Most men are apt to put off these arrangements too long. Unless the medical attendant can properly frame a will, the estate must often be diverted from its intended objects; and in many cases the results are deplorable. If he has competent skill, he can perform the task more

perfectly than any other; for he knows all the symptoms of waning reason and strength, and is not likely to wait beyond the period when the testator passes the line between competency and incompetency, and ceases to have the disposing mind which the law requires for a testamentary act. A physician, too, is frequently more thoroughly acquainted with the family affairs of his patient than the most intimate legal adviser; and the knowledge obtained in this relation is of great value, in enabling suggestions to be made, which relieve the anxiety of the dying man, and save from over-exertion faculties which have become enfeebled and sluggish.

Even if no provision were made with a view to the education of professional lawyers, a Law Department could not be regarded as foreign to the plan of a University. To the considerations already mentioned, many more could be added; but it is unnecessary to dwell any longer upon this view of the subject.

Very few intelligent persons dispute the necessity of having in every country a body of men whose lives are devoted to the practice of the Law. There are some who decry the profession as an evil; but when they get into difficulty they are generally glad enough to resort to counsel for aid in their troubles; and if they fail to do so, they are likely to repent it. The folly of these senseless prejudices is sufficiently betrayed by the common experience of mankind.

If the Law were designed to enforce in every case what an enlarged morality requires as the duty of man to man, and if we could find for its ministers perfect beings who could read the hearts of men, and do unerring justice, there would be no need of a legal profession, or of courts of law. We should need neither statutes nor commentaries. But to entrust judges with the power of administering justice according to their own notions, would be worse than restoring pure despotism. SELDEN, although wrong in his views concerning the real power of Courts of Equity, very quaintly and forcibly expresses the evils of entrusting any court with such plenary powers. "'Tis all one as if they should make the standard for measure the Chancellor's foot. What an uncertain measure would this be. One Chancellor has a long foot; another a short foot; a third an indifferent foot. It is the same thing with the Chancellor's conscience." It would be well for those who sometimes find fault with decisions, because they fail to do justice in a given case, to ponder the consequences which would follow, if judges were relieved of the duty now laid upon them of deciding according to what the law is, and not what in their view it ought to be. There is a strong temptation at times, where unjust consequences will follow from enforcing the law, to assume the prerogative of doing what is supposed to be abstract justice. But every such act, how-

ever meritorious it may seem at first, is culpable and unjustifiable. The making of laws is not entrusted to the judiciary. And so long as a rule stands as settled law, any wilful violation of it, from whatever motive, is just as much an act of tyranny as if an executive officer should nullify the statutes, and assume arbitrary prerogative.

It was long ago declared that, wherever the law is vague or uncertain, the people are in miserable slavery. They can not tell, when they do an act or make an agreement, whether they are violating the law, or assuring to themselves any rights. They can not even tell under whose judgment their condition is to be determined; for the magistrate of to-day, when the act is done, may not be the one of hereafter, when it is judged; and that which is based upon the enlightened wisdom of a Mansfield, may not commend itself to a Jeffries or a Scroggs. The law must be so settled that every man may know his rights and obligations, and make his contracts accordingly. Such has been the rule laid down by the wisdom of ages; and so just is it, that in those cases where, under supposed peculiar hardships, courts have sometimes interfered by crossing this line, in a great majority of instances they have done actual as well as legal injustice.

It is one of the advantages which we have derived from our mother country, that a very large portion of our law is found, not in statute

books, but recorded in the decisions of early courts, which express, not the opinions of those tribunals upon what should be law, but their recognition of the established customs of the realm. Those customs were the embodiment of old and simple legal principles, as modified and applied by the general experience of the people. They embraced no crude theories, and no impracticable conditions. And, having their origin in the approval of popular experience, obedience was not irksome, and duty was easily known and understood. All of those rules or customs were required to be reasonable, general, and ancient. And the wisdom of man never has devised, and never can devise, a written code, which can mould itself to the popular wants, or adapt itself to the growth of expanding civilization, like the slow and spontaneous product of the common will, as it grew into the Common Law. Here, as in England, many customs have required changing, and many exigencies have arisen, and will arise, requiring statutory intervention; but the main body of our legal principles must always be traced to the free and manly elements of the Common Law of England. Its time-honored principles were the vindication of our Revolution; and when we depart from these principles we shall not be advancing towards truer freedom.

It must be plain to all judgments, that the task of studying out this system of jurisprudence, and harmonizing with it our numerous statutes,

can not safely be entrusted to ignorance or inexperience. To an untrained mind, the great body of common law maxims and statutory enactments presents an appearance confused, if not chaotic. When asked to determine the rights of a given case, by reference to this vast treasury of law, the first idea is to hunt for analogies; and when a precedent is found that resembles it in one or more features, a conclusion is jumped at, and the selected rule applied. In many cases it is about as correct as it would be to class together lambs and wolves, because both are quadrupeds. The analogies with which true science deals are real, and not delusive; and rest, not in external resemblances, but in substantial identity. The governing rules are not learned from a partial and careless survey, but from a minute comparison of the whole. Any system of law which does not approve itself by its applicability to all the ordinary concerns of life, is defective. But if precedents were not based upon general principles, there could be no such thing as a legal system. An offence which did not square in all circumstances with one already recorded and punished, must go scot-free. An agreement not anticipated in the past, would be unprovided for. The rights and duties of men would never be thoroughly defined until the race is extinguished. Our rights and obligations depend on no such absurdities. The Law exists in as complete a form as human foresight could make it,

and is as dependent on general principles as any human science. Like all other sciences, it is capable of enlargement and extension, but, like them, its growth should be by harmonious increase, and not by added excrescences. And no one can assume to have attained any progress in the knowledge of this science, until he has learned to recognize its living and eternal principles, and learned also to apply them to the exigencies of human life. And when we pause to consider the immensity of the field occupied by it, and the great and serious interests with which it deals, we should regard no labor as too irksome, and no training too severe, in the preparation for this study. I say in the preparation for this study, for the true study begins when actual, and not imaginary, cases call for the application of legal rules; and it may be profitably pursued through a lifetime.

The nature and carefulness of the preliminary study of any subject, should bear some relation to the magnitude and importance of the ultimate pursuit. And it is safe to say that, after the subjects which concern the eternal future, there is no department of human study which deals with more important interests than the Law. It is the binding principle of all organized society, and the only true upholder of every government. When individuals rebel against society, and seek to impair the private security or public peace, it

is the law of the land which judges them, and it is through the legal tribunals that justice is asserted. When the public infringes upon the rights of the subject, every constitutional government gives him redress through the courts against the unlawful usurpation. When the life, liberty, property, or domestic rights of one citizen, are invaded or denied by another, the law furnishes protection and redress. Where there is no law, there is no freedom.

All persons who assume the position of legal practitioners, assume the right and the duty of asserting the principles of the law against any public or private violation of individual privileges. They stand between the criminal and his pursuers, to oppose any unlawful condemnation. They stand up for the public, to see that the criminal shall not escape on any unlawful subterfuge. They are bound to know every rule which applies either to condemn or to save him. In all the ramifications of evidence, as well as on the general principles of criminal law, the counsel engaged must be prompt to detect every violation of established rules, and to vindicate every rule unjustly assailed. And this he must do at once, as the question arises. The rule itself must be deduced and enforced from the laws which common experience has drawn from human conduct. And the trial of a single important criminal cause, on complex circumstantial evidence, illustrates more of the laws

of mind, and calls for a knowledge of more of those laws, than would occur to a cloistered student in a lifetime.

In trying the validity of a contested will, there is an equally important field of investigation, in applying the law to human conduct. The probabilities of the adoption of one course or another, from the habits and affections of the deceased — the extent of mental capacity, and the probabilities of capability or incapability, sanity or unsoundness, at a particular time — the lingering paternal love for undutiful children, or the capricious and brutal rejection of the dutiful, — the secret history of domestic life revealed or skilfully inferred, — the effect of sickness, and the remedies applied to alleviate it, or of baneful drugs administered for dishonest ends — these, and many other kindred matters, are brought into view; and the counsel who tries, and the judge who decides the cause, must apply to the solution of the difficulties they suggest great insight into very important and difficult questions, or the truth can never be reached.

The trial of Patent Cases involves an accurate knowledge of mechanical principles, as well as of the law applying to inventions. In Admiralty causes, besides curious revelations of human nature, there are questions of currents and counter-currents, winds and waves, with their forces and combinations, the seaworthiness of ships, and the choice of probabilities, depending upon so many elements,

that there is need of great knowledge, fertile imagination, and strong reasoning powers, to deduce from the chaos of facts a true result, and apply to that result the legal consequences. There is no subject whatever that may not enter into the inquiries of a law suit, and its possibilities are only limited by the limits of human ingenuity and human interests.

If there is any profession or pursuit which demands the strongest exertions of all the intellectual faculties, it is the Law. They are greatly mistaken who suppose that a little reading of law books will qualify one for this practice. The old system adopted in most States required seven years' study before admission to the bar, four years of which might have been devoted to classical or similar studies. In this State, a three years' law course was required in all cases. A bill has recently been introduced into Parliament by Lord Campbell, to allow those who have received university degrees to be admitted as attorneys and solicitors on a shortened apprenticeship. This term was not prescribed merely for the amount of legal knowledge which might be acquired in it, for then a measure of acquisitions would have been adopted. The reason for requiring this measure of time was to ensure habits of study and discipline, which must always be a work of years. Habits long formed are easily kept up, and the mind becomes enabled to act spontaneously, and without sensible

effort, in the paths thus worn for it. And those whose attention has been called to the effect of our present system, which requires no particular period of study before admission, are not favorably impressed with the result. It is not very difficult to acquire enough law to bear a tolerable examination, without any real fitness for the bar. And, as a general rule, those who rush through a short course, and obtain admission, do not reach a respectable position any sooner than if they had followed the old course. They become bewildered in the rapid movements of trials, and lose their coolness and self-reliance. Unless possessed of more than ordinary energy, they become tempted to depend upon other counsel; and fall back, and remain in the position of mere attorneys. The ranks of the bar, properly so called, are not increased as rapidly as formerly, in comparison with the numbers admitted to practice law.

It is to be hoped that the time allotted to the completion of a full course in this Law Department, will aid those who avail themselves of it, in systematic study and learning, and direct them into such a way as may lead to a due appreciation of the legal profession, and its duties and responsibilities. No school is capable of imparting, and no mind is capable of learning, the whole science of the Law, so as to exhaust it. Practice, and careful study, in connection with practice, must

complete the work. But success at the bar is mainly dependent on a right commencement; and the patience and diligence expended in laying a sure foundation, will never be regretted.

It is not a requisite of admission here that a college course should have been pursued first; but it is a matter of congratulation that, by making this school a part of the University, the propriety and utility of that preparation is recognized. A full acquaintance with the structure and derivation of language will lead to accuracy in its use; and accuracy is greatly essential in the law. A thorough grounding in mathematical studies will lead to method and attention; and the intricacies of law suits require unwearied patience in following every clue, and tracing every connection. The art of reasoning forcibly and correctly, and adorning and elucidating argument by choice and fitting language, can no where be acquired more completely than in the seats of elegant learning.

No acquisitions can be too extensive, and no study too complete, to prepare one for all the duties of the bar. There is no kind of knowledge which may not be turned to account in the practice of the Law. Controversies arise upon every imaginable subject, and evidence is introduced, and inquiries are set up on every variety of questions, from theological tenets through the whole realms of art and nature. When a scientific witness is examined, the examining or cross-examining counsel

must fail in getting out the whole truth, unless he has at least knowledge enough to direct his investigations. And so, upon all other ranges of inquiry, there is the same necessity for counsel to be informed. If universal knowledge were attainable, every lawyer should seek to attain it.

But while this completeness of knowledge is out of the question, it is nevertheless a plain dictate of common sense that the sound lawyer should be prepared, whenever the occasion arises, to master so much of any branch of knowledge as his case demands. And this necessity shows how desirable it is that every faculty should be trained to work promptly and thoroughly. And the moral is not to be divorced from the intellectual. Above and beyond all other similar pursuits, the profession of the Law deals with the acts and motives of mankind. In most legal inquiries, the design to be derived from the facts proved is the principal, if not the only thing in controversy. The rules of law are based upon human conduct; and no one who has not patiently studied, and has not a reasonable knowledge of, human nature, can hope for success at the bar. And this knowledge can never be thoroughly acquired without honesty of purpose, and a healthy state of morals. There are many vile men who have sounded the depths of diseased natures, and are familiar with all the turnings and expedients of the depraved. But their cunning forsakes them when they deal

with the frank and the virtuous; for God has wisely ordered that wicked craft can never attain the heights of wisdom. And those who have steadily watched the career of brilliant knaves, will bear witness that their judgment is rarely enlarged by experience, and that, as time wears on, their inward treachery becomes so apparent in their outward features, that the subtlety which once could entrap the most wary, is at last unavailing to ensnare the simple.

Neither are those to be followed who would shut out the lawyer from liberal and polite knowledge. The Law deals with men as they are; and he who denies to any of his faculties the exercise which is most fitting for them, deprives himself of weapons which he can not wisely spare. The Law must not be neglected for other pursuits. But the study of Law is not the study of law books alone. And when we compare the dry-brained sages who have decried all other knowledge, with those who have added elegant attainments to legal lore, their fame sinks into nothingness. Within the last century the Law has advanced into greater completeness and more rational progress than was ever dreamed of before. Law reform in this country has not always been wise or consistent. But here it has not generally been the work of our sound lawyers, and its defects are not chargeable to the profession. In England it has been the work of lawyers alone. Sir

William Jones, Mansfield, Brougham, Romilly, Mackintosh, Talfourd, and a host of other worthies, living and dead, have reaped laurels as poets, historians, philosophers, and statesmen, and raised the standard of legal science to a position worthy of its character as the regulator and preserver of the great interests of society. The men who have changed Law from a technical art to an enlarged and noble science, have always been men of liberal minds and broad views. And no one who compares the scholastic narrowness of some of the ancient legal pedants with the profound wisdom of Marshall, could wish that the measure of our liberties should have fallen into other hands.

Let every one come to the study of the Law with a proper sense of its dignity and importance. To such as seek to pursue it with the desire of aiding justice, and honorably advancing the welfare of society, it is a study full of interest, and well worthy of ambition. But those who approach it with the mean desire of using their knowledge to aid cunning and rapacity, will fail to fathom its deepest mysteries; and sooner or later will reap a deserved harvest of scorn and dishonor.