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THE TEACHING OF LAW AT OXFORD.

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A question we have had with us always—or if not so long, at least ever since man became wise enough to ask questions he could not answer—is the question of justice. This question is one of the eternal problems of moral philosophy, which is itself one of the great branches of human knowledge.

In an ancient university which still aims rather to preserve and hand on what man has thought, than to devise and teach the means of earning an easier livelihood, one would expect this very interesting problem of justice to get much consideration. And so at Oxford it does. For not only is it the subject of some of the subtle speculations of the intellectual aristocrats who read for the Honour School of Literae Humaniores, but it is even almost hopefully approached at times by the humbler thinkers of the Honour School of Jurisprudence and by the hard workers for the degree of Bachelor of Civil Law in preparation for their respective examination papers on General Jurisprudence. Whatever academic respectability the law student enjoys in the eyes of the philosophers, comes from his contact with their high calling at this point.

The abstract or ideal justice that never was on land or sea—especially on the sea during war—is left for the most part to the pure philosophers, who are more capable of making an intellectual voyage by dead reckoning. But after all, a very humanly interesting side of this problem of justice is the age-long attempt to do justice as between man and man, man and state, and state and state. In other words, there is the field of positive law, private, public, and international, to be explored. This positive law, or simply law stripped of all its figurative meanings, which might be described as justice brought to earth and put to work, seems very little less difficult to know all about than abstract justice. In the first place one asks, What is it? The analytical jurist tells us what it would be if the historical and comparative jurists had not brought in some uncomfortable facts which the analysis takes no account of. Still,

though there may be populous and well behaved communities in India which obey no rules that any legislature has made, and though the last thing one may reasonably hope to know is just where sovereignty resides under the American Constitution, there are and have been states in the analytical sense, which came into existence by social contact or otherwise—mostly otherwise. The people living within these states are and were subject to law. Fortunately the two states in which a student of law is most interested, Rome and England, offer little difficulty to any school of jurists. So the student may easily assume that both Roman and English law are law.

Without knowing just what law is, one may, nevertheless, taking a cue from the method of the electrician, inquire how law works. The ground here seems somewhat firmer; for one can say, The law affects certain relations of persons. But what is a person? From the time when the term was used as the name of the mask a Roman actor wore, and had nothing to do with law, until it came to be applicable in modern Roman-German law to a *Stiftung* or fund, having again nothing to do with humanity, it has had many different meanings. Nor is its career yet finished. The man who has located sovereignty under the American Constitution may try his wits on the personality of Canada under the League of Nations. These relations which would not be the same, or might even not exist, if there was no law, may be catalogued and described. But here again analysis alone of any system at any one time will not suffice. Analysis must be made in the light of comparative history.

Assuming these relations to exist, it is interesting to inquire next, on what principles they are created, altered, or put an end to. This brings us around to a study of the specific rules of law, as opposed to the general conceptions and terms of jurisprudence. A detailed study of all the rules of law that have ever been in force anywhere would be too great a task for anyone. Some selection must be made. In both the Oxford law courses, which may be called for short the B. A. and B. C. L. courses, the selection for this purpose is confined to Roman law and English law. These two systems of law together almost cover the western civilized world, and have done so for a very long time. But even these two systems in their en-

tirety, with International law added, would seem a rather heavy undertaking. This fact is recognized, and so a further selection is made.

Let us take up first the B. A. course. In English Law the topics selected are the law of Contract, of Torts, and of Real Property, as modified by the rules of Equity applicable to each. These three topics bring into view the rules governing the most important legal relations of man with man. The relations of man to the State, as well as the machinery of government, are brought into view by a study of the Law and Conventions of the English Constitution. There is also required a study of English Legal History, that is to say, the history of each of the three branches of private law above mentioned, together with the history of the principal modern law courts of England, and of the courts that have been merged in one of them. In Roman Law a selection of the topics most fit for elementary study has been long ago made for us. The treatment of these topics in the Institutes of Gaius and of Justinian, the former written near the beginning, the latter at the end of the classical period, is made the basis of the required study of Roman Law. It is optional to take up in addition to the Institutes a selected title of the Digest. Heretofore the title selected has been Digest IX.2, *ad legem Aquiliam*—the law of damage to property; hereafter it is to be Digest XVIII. 1, *de Contrahenda Emptione*—the law of sale.

In the more advanced and technical B. C. L. course, which is often taken as an additional year's work following the B. A., the topics selected in English Law are Real and Personal Property, Common Law (including Contract, Torts and Criminal Law), Procedure, Equity (with special reference to Trusts and Partnership), and one Special Subject selected by the student. The Roman Law required is the principles of Roman private law as set forth in the Institutes of Justinian, and a Special Subject prepared with as many references as possible to pertinent passages in the Digest and in Gaius. Private International Law or the Conflict of Laws may be chosen in the place of public International Law.

In both courses, then, there is required a study of general jurisprudence, of international law, and of certain portions of English

and Roman law. With the exception of the specific differences of content pointed out above, whatever may be said of the one course is true also of the other. For this reason it is unnecessary to keep distinct the B. A. and B. C. L. courses in a further discussion of the teaching of law at Oxford.

Law is taught at Oxford pretty much as other subjects are taught there. The immediate objective of the teaching is to prepare the student to pass an examination. When the student has passed the examination he is entitled to ask for his degree. Until he has passed it, he has nothing that corresponds to credits in an American university. All credits, if the term may be used, towards an Oxford bachelor's degree are gained by the candidate in one strenuous week during which examination papers at the rate of two a day are written until the whole course of study required for the degree has been covered. The examination is a unit. At the end of it, the candidate has either wholly earned his degree, or wholly failed to earn it. In the latter case, if he still wants his degree, he must come up again and be again examined on his whole course. The old college story of the upper classman who justified his having forgotten some very elementary matter with the observation that he had had no occasion to think of it since his freshman year, is not an Oxford story. For at Oxford a man is not rated according to what he knew at different times about different parts of his subject; but according to what he knows at one time about his whole subject. This obviates an objection that might have been raised to a system of teaching which is directed primarily to preparation of the student for examination. The process is not at all one of cramming for examinations. While one may by cramming remember what is covered by terminal, or perhaps by annual examinations, one can hardly retain undigested and unassimilated the subject matter of an entire subject, such as Law, Theology, or Modern History. It should be further remarked that the Oxford examination is framed not so much to discover what the candidate does not know about his subject, as it is to give him an opportunity to tell what he knows about it. Hence, about twice as many questions are asked on each paper as are required to be answered; and the questions are rather sugges-

tions of themes for short essays than pointed interrogatories calling for short dogmatic answers. Out of ten questions, the candidate may choose the five or six from which, as starting points, he can best display in three hours what knowledge he has of that branch of his subject. The real purpose of the examination is not so much to determine whether the candidate should pass or fail, as it is to determine whether he should take his degree with first, second, third or fourth class honours. He is advised not to 'go into schools,' that is to say, not to take the examination, if it is probable that he will altogether fail to pass. The written examination or 'schools' is followed, so soon as the examiners have had time to read the papers, by a viva voce examination. The purpose of the 'viva' is to remove all doubt in the minds of the examiners as to what class, if any, the candidate should be put into. This provision is made the more necessary by the fact that members of the Board of Examiners may happen to have had none of them anything to do personally with the instruction of the candidate.

Thus, although the immediate objective is preparation for the examination, the examination is so managed that successful preparation for it necessitates just such assimilation and correlation of the different parts of the subject as are most likely to result in a fair degree of permanency of knowledge of the subject. The task is too great to be compassed as a feat of memory. The student does not attempt it as such. The examiner, calling as he does for all the candidate's law at one time, is well assured that the candidate is not giving out what he has today, did not have yesterday, and probably will not have tomorrow. He knows that in the main the candidate is drawing upon what he has appropriated and made a part of his ordinary stock of ideas.

Whichever may have been antecedent historically, it is perhaps not a mistake to say, looking at the present situation, that the character of the examination largely determines the methods of instruction. The thing desired is that as many legal notions as possible may become commonplaces in the student's mind. For this purpose it seems well that the same notion should be met often in different ways. Intimate acquaintance does not spring from a formal introduction and a speedy farewell, but rather from frequent meet-

ings. No single method, therefore, which would carry the student once along the whole course, introducing him in turn to one legal notion after another, is adopted. Neither the casebook method, nor the textbook method, nor the lecture method, nor the tutorial method is alone considered quite sufficient. Therefore, all of these methods are employed together.

The decided cases to be sure are not scorned. Collections of leading cases are read. And in courses of 'informal instruction,' so-called, various lines of decisions are taken up from the reports and discussed. So far are cases from being ignored, that in examination papers and otherwise the metonymy of using the style of a case for the leading principle first enunciated therein is regularly resorted to as a time-saving device. No examination paper in any of the branches of English Law is highly regarded unless almost every observation is buttressed with a citation. This in effect is a requirement that a good deal of a student's legal thinking shall have been done in terms of leading cases. But it is recognized that the judgments were not composed for the instruction of students, so much as they were to settle specific disputes; that the *ratio decidendi* is often far from obvious; that usually a judgment deals with many distinct points of law, and quite often in the part of it which deals with the point of immediate interest there is no magic virtue in *ipsisssimis verbis* of the judge. It is recognized that judges are not the only persons who have thought seriously of the law, and have written down what they have thought.

Cases therefore are not solely relied on for statements of what the law is. Of course, in General Jurisprudence the great writers are resorted to. The student is not, and may possibly never be, a very powerful original thinker; nor is he an erudite historian. He can, then, with profit read what has been written by such men as Hobbes, Bentham, Austin, Maine, and Bryce. But even on various branches of English law there have been written for the use of students classic treatises, the reading of which, it is conceived at Oxford, will facilitate the student's acquaintance with those branches. Book II. of Blackstone and Williams on Real Property, Anson on Contract, Pollock on Torts, Dicey and Bagehot on the Constitution, are not considered harmful books to read. So also in

Roman law the commentaries of Muirhead, Poste, Moyle and Sohm on the Institutes of Gaius and of Justinian are thought to be rather helpful to a better understanding of the subject matter of the Latin texts. The fault involved in the use of this method, if it be a fault, seems to be a matter of degree; for it is observable that many case-books are generously peppered with excerpts from the text writers. The casebook compilers possibly go upon the theory that textbooks, when grated, may be safely used as condiments to give relish, but when served as a dish for nourishment they are positively deleterious.

A further acquaintance of the student with the law is sought to be established by formal lectures. Thus in International Law, while a student may read Hall or Phillimore or Lawrence, and Pitt Cobbett's Cases, he may also hear lectures from a man who has represented Great Britain in international law suits. In Real Property while the student may read cases, and read texts, including Bl. Comm. II., he may also hear the present incumbent of Blackstone's professorship make fairly easy what had seemed very hard to understand. In Jurisprudence he may hear lectures by the man said by Maitland to have been the only one he had found fully capable of making his way about among the very old cases and treatises. Every branch of the law course is covered by one or more courses of lectures. Whether the instructor standing delivers his notes to the student sitting, or sitting delivers his notes to the student standing as if to recite, might not seem so important if so much had not been said about it. But this is just the difference between one phase of the casebook method, and one method of the Oxford system of instruction.

It may seem from what has been said that such teaching is without system; that what has been described shows much overlapping, and no co-ordination. The overlapping, as has been already pointed out, is intentional; for thereby the student's attention is directed more than once to the same topic. But it is a mistake to suppose there is no co-ordination. The tutor, among the many things he does, directs the student through what might be without him a very tangled pathway. He tells the student what lectures to attend and when to attend them; what books to read and when to read them. But he does much more than merely to direct the student when and

of whom to learn. He is also the student's main teacher. In law at Oxford there is a tutor for perhaps each dozen students. He is not always or usually a last year's graduate; he may be a D. C. L. He exists not at all for the purpose of propping up almost hopelessly weak students. His way of dealing with such students is to recommend that they quit the honour school altogether and go in for groups, a very much easier course, taken in broken doses and consisting of one part law and two parts something else. He may be one of the university lecturers. He may be the writer of one or two textbooks. But as tutor he is the teacher of several small 'classes' ranging in 'enrolment' from one to three each and aggregating probably a dozen. These students, who are under his direct personal supervision, he meets singly or in small groups as often as he likes, probably once a week during the first year, and once a day during the last term before the examination. He may give them private lectures on certain topics; but mainly by a process of reading, essay-writing and discussion he carries them over the whole ground covered by the course. Finally it is upon the tutor's advice that the student enters 'schools' and becomes a candidate for a degree.

As was suggested at the outset, the subject of law is read at Oxford as one part of what man has thought. As such, the law is a thing interesting in itself and fit to be learned for its own sake. But the individual may be interested in the law in two other ways. It is useful as his own personal guide. He is bound by it, though he be ignorant of it. He cannot but be better off if he knows the law. Some individuals also are interested in it, because they have taken upon themselves to advise others in respect of it. For these last, the professional lawyers, is the subject of law as read at Oxford of any use? It is certainly not sufficient to qualify a man at once to go out and give a correct kerbstone opinion on every possible point of substantive law or procedure. But no law school does that. All that can be hoped in this regard is that the law school may put a man in the way of becoming a sound lawyer in the fulness of time. This it does by increasing his native power to guess what the law is, or what it will be, and by giving him skill in verifying his guess as to what it is, and in supporting his guess as to what it will be. His

ability to guess shrewdly and to support his theory ably depends upon his grasp of legal principles. His ability to verify a guess as to what the law is depends upon his knowledge of the use of authorities. A man who prepares for an Oxford examination in law usually has enough direct dealing with cases and statutes to enable him to find an authority, and to recognize it when found. But increased guessing power is in the ordinary case the important thing for the practicing lawyer. Search for authorities can only intelligently begin after the lawyer has decided what general principle covers the facts recited by his client, and what sort of decision the application of that principle to the facts should be likely to result in. Until he has decided this, he is not prepared to recognize an authority when he sees it. He may even think, since his client happens to be concerned with sheep, that a hog case will not do. But after he has properly referred his facts to some principle he may begin to follow the working out of that principle in the reports until he finds an authority exactly in point, even though the authority be a hog case and not a sheep case. It is not claimed for either of the Oxford courses that it makes every principle of English law a permanent possession of every student. It is only believed that within the field covered in detail by these courses the student, in the matter of learning, retaining in their true bearings, and applying in practice the principal rules of law, is at no disadvantage because of the methods of instruction and examination employed.