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## LEGAL EDUCATION.—III. HOW MUCH?

HAVING, in our two former articles, undertaken to inquire *why* a lawyer should be educated, and in *what*, before his admission to the bar, the subject would obviously be left incomplete without a few words upon another branch of the inquiry, and that is *how much*, or to what extent should this education be carried to fit a young man for such admission. And in the first place, it is not possible, in the nature of things, that he should know much of law in the time he is expected to devote as a student, even if it be five years —the longest time, we believe, required by any of the courts for admission. The field is so vast, the subjects so infinite, and the human memory by which what he does have of any of these is retained, is so limited and fallible, that a student could not, if he would, lay up a store of legal learning which could serve him, to any considerable extent, as the knowledge he will have to use, when he comes to meet the various calls which a lawyer, in practice, has to answer. The most that a student can acquire in his preparatory course, is to know, generally, what is embraced under the head of Law, whether and where a particular subject is treated of, and to have his powers of attention, discrimination and judgment so trained by exercise and discipline, that he can, by examination, readily discover what the law is, how it applies to the question he is to solve, and thus form a judgment in the matter, which it will be safe for him to follow. The business of a student is not to load down his memory, but to quicken, strengthen and find out how to use every power that he has got. That is educa-

tion. He may gain much and useful knowledge in doing this, and the more he trains and brings these powers into activity, the more easily he acquires knowledge, until the proper use of these powers becomes instinctive and automatic, as it were, in aiding him in getting and using new knowledge as he needs. There is no calling or profession in the world which requires so many and such variety of a man's best powers of intellect as that of the law. A lawyer has to deal with all sorts of subjects, and all sorts of men. Nor can he content himself with a mere superficial understanding of a matter. The very nature of his employment implies that he has an antagonist to engage with, whose duty and interest it is to criticise and examine his positions, and expose their fallacy or weakness, and he cannot afford, if he would, to deal loosely or carelessly with a matter intrusted to him. Now to do this with effect, requires the possession and command of a man's active as well as his reflective powers. Both must be ready at his call. And it is in this way, that he turns his stores of acquired knowledge to use and account. And the comparative facility with which this is done often gives the advantage which an adroit manager of cases has over one more learned but less skilled in the use of his knowledge.

It may, however, be said that this training of the intellectual faculties is the work of the school or the college, and antedates the novitiate of a law student. If it were true that none but such as had been subjected to the discipline of a well conducted school or college, began the study of the law, it would still be true that the training they had received, would, at the best, be but imperfect. It would still be necessary to be able to apply it on a new and broader field. And when it is remembered, that not a few who study law, come to it without any such previous thorough preparation, we see the need there is of resorting to some such processes as are made use of in our best colleges, to carry on their education with success. The difference would be very much like that between using a different set of text-books. A treatise on contracts, for example, instead of one on moral philosophy, and on contingent remainders instead of conic sections or the calculus.

In what we have thus far said, we have here in view the mode and nature of the education of a student at law, rather than the quantity or extent of the matter taught. And even in treating of this, we do not propose to go into details of the subject, or the text-books to be studied. There are certain grand divisions of

LAW. regarded as an entire science, which are tolerably well defined, and it may be assumed that a preparatory legal education cannot be considered as even tolerably complete, until the student shall have gained an appreciable amount of knowledge of each of these. He must know something definitely and accurately of the law of Real Property, of Contracts, of Domestic Relations, of Torts, of Pleading and Evidence, of Equity and Criminal Law. This may be called the technical part of his education. And the embarrassment which a student has felt in attempting to follow any of the treatises on the study of the law, which assume to point out the best mode of pursuing the study of these subjects, has been in the multitude of books which are prescribed as desirable or necessary to be read by him, to say nothing of the uninviting character of some of the books themselves. One would hardly ask for a longer life than it would require, with constant diligence, to read the works recommended by Mr. Hoffman in his "Course of Legal Study," "addressed to students and the profession generally."

These treatises, moreover, are based upon a course of reading which ignores the aids and processes of law schools. Indeed, Mr Warren condemns lectures as a mode of teaching law, whereas, if any one thing has been learned by experience in the matter of legal education, it is that the same processes are to be pursued in an elementary course of instruction in the law as in any other science. Not only may text-books be used to advantage, but lectures by way of illustration and explanation, if adapted to the capacity of the student, may be of immense value in helping him to understand and apply what he has read in the text-book. So that if a law school stopped here, its value and importance to the student could hardly be overrated. But when we take into consideration the advantage which a class of students, who are pursuing the same studies, may be and are to each other, it is hardly overstating it to say that it can be supplied in no other way. It not only gives a life and interest to what can otherwise hardly fail to be dull and unattractive, to know that one's associates are engaged in the same study, and to hear them speaking and conversing upon the subject upon which he is engaged, but it brightens and quickens one's apprehension in respect to what he is reading, to have the propositions which he is expected to consider brought into discussion by the different views expressed by others with whom he is in daily association. It is the attrition of mind against mind, by an exercise of intel-

lectual gymnastics. And this can nowhere be so fully or freely enjoyed as in a law school.

In coming back, then, to how much a student should include in a preparatory course, we are to be understood as connecting with it the instruction of a law school as one of the means of prosecuting his education. We have no faith in learning law as an apprentice does his trade, by *doing* the same thing over and over again, till he masters it by manipulation, independent of the science that lies at the bottom. A man may copy forms till doomsday, and never know the reason of what he is doing; whereas, let him first master the rudimental principles upon which the forms and practice of the law depend, and he will understand in the very first form he copies after leaving the law school and entering an office, what it means and how it accomplishes its ends. A legal education has a broader scope than merely learning how to do a thing. A lawyer must be ready to engage in the making and administering laws, as well as construing and interpreting them, and therefore must know beforehand something of the science of government. In construing and interpreting laws, he ought to know something of the history of the changes through which the community, where they are in force, have passed, which led to their adoption, and lend a clue to the reasons which originated them. History, in that way, becomes an essential part of the study of the law, and that professor or instructor is unfit for his calling who contents himself with mere statements of dry legal dogmas, stripped of the life and spirit which they draw from the circumstances under which they were first evolved; studied in these relations, one is able to understand, as he can in no other way, the harmony and interdependence which run through the leading principles which prevail in any department of the law. He begins to perceive that what he sees laid down in separate and distinct sections in a law treatise is not always a separate, independent legal maxim or proposition, which is to be remembered only as a date or a name, but that it may serve as a guiding principle in helping to understand and apply other important doctrines, with which, to a less-trained observer, it has little or no connection. And if this is of value to a student or lawyer in ascertaining what has once been settled as law, it is hardly less so in aiding him to keep up with the law as it *grows*. We do not suppose a student will be ready to do this while a student, but if he is properly taught, he is put

upon a track which in due time enables him to forecast, as it were, the new dogmas of the law as they are needed to supply existing defects. A single word will explain what we mean. Everybody who has watched the progress of the law, must have observed that from time to time questions arise, for the solution of which the courts have no precedent to guide them. In some cases they are able to trace enough of analogy to what has been decided to draw a consistent rule for settling the particular case before them. In these investigations they are often led to see that a new principle is needed to meet a new and peculiar state of facts, and they throw it out as a something which may be law without assuming it to be such. Another court, or the same court at another time, and from a different point of view, are led to embrace the same idea, till after several tentative hints and suggestions of what the rule ought to be, it is boldly enunciated and accepted as law, and nobody doubts it afterwards. To do this, however, successfully, the court must first understand the genius of the people, what they need, and what they are ready to accept as law. They must know what the law is, that the new rule should not clash with existing ones. They must know, outside of what they see and hear in the court-room, what the social, moral and political condition of the people is, and what are the wants of their business and the exigencies to which they are subjected by climate, soil and other influences by which they are surrounded. This implies, indeed, a maturity of knowledge as well as of thought and judgment, which is not to be expected in a student. But to gain these implies a course of reading, study and reflection which is open to every man of liberal culture, young as well as old. And if a student at law will, outside of his technical studies, read history, political economy and moral science, he will be gathering up the very kind of knowledge which he will bring to bear upon new questions as they arise in meeting the demands which are to be made upon him in performing the duties which his profession devolves upon him. In this way he learns to be a co-worker with the courts themselves, and helps to guide them in their researches. The earlier he begins to train and prepare himself for this high duty, the sooner and the more sure he is to win the position at the bar, where he can make his power and influence felt. Speaking of another subject, Mr. Maine uses language which is applicable to this: "English law is in fact confided to the custody of a great corporation of which the

bar, not the judges, are far the largest and most influential part. The majority of the corporators watch over every single change of the body of principle deposited with them, and rebuke and practically disallow it, unless the departure from precedent is so slight as to be almost imperceptible."—(Village Communities.)

But we have already said enough, though far less than what the subject demands, to show how broad must be the preparation of a student who hopes to command honorable success in his profession. He must regard it as a liberal science, and worthy of his best efforts and his highest aims. And there is another process of training, through which he must pass, in order to succeed, and that is in knowing men and how to deal with them. In the first place, he should know what belongs to a gentleman, and should never compromise his claim to be one. There is no power at the bar so potent for success on all occasions as a self-relying courtesy. A lawyer degrades himself and his profession every time he so far forgets himself as to fret and grow angry or petulant in the conduct of a case. He cannot afford to quarrel with the court. He ought not with the bar.

If it is said this courtesy is a gift, like a fine figure or musical voice, the answer is, if a young man has a decent share of common sense and good temper, there is no difficulty in training and educating him to be courteous and gentlemanly in whatever he does as a lawyer. And here let us, in conclusion, say, there is no school that we know of so well calculated to educate a young man in all the respects of which we have spoken, as a good law school. In that is embraced a good library, good instructors and a body of ingenuous young men who come together for a common end, with high purposes and generous motives, old enough to know what is due from one gentleman to another, and free and independent enough to rebuke rudeness or coarseness in any of their number, and to imprint lessons of propriety upon the minds and memories of the most reckless among them. That schools of common law are peculiarly an American institution is probably known to our readers. That we have among them, if it is not true of all of them, some whose training and modes of teaching would justify all that is claimed for such a school, as a place for preparation for the bar, we need no further evidence than the characters of the men who have gone out from them. EMORY WASHBURN.