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THE PROPER PREPARATION FOR THE STUDY OF LAW.[1]

The law has always been called a learned profession, but until recently no preparatory education was required of those who sought to enter it.

There were no examinations for admission to any law school prior to 1877, and as late as 1890 only one school had adopted admission requirements equivalent to the entrance requirements for admission to college. Indeed, in the last decade the majority even of fairly good schools had only that time-honored, but utterly useless check on unfit apppli-cants—that they should be of "good moral character." Of late, rapid progress has been made, though it is indeed true that if we look at the entrance requirements of our law schools, we will still find much to be desired. Thus of the eighty-four schools, the catalogues of which I have examined, no less than forty-six have no entrance requirements, though in many cases this fact is concealed by such empty phrases as: "No special literary qualifications are re-

[1]Address delivered by Dr. William Draper Lewis at the Twenty-third Annual Meeting of the American Bar Association, held at Saratoga Springs, N. Y., August 29, 1900.

quired to enter this school."—"The applicant must be sufficiently advanced in education to comprehend the principles taught," or, "he must have a good English education." One school solemnly announces that the applicant "must be able to read;" others, however, say frankly that the only requirement is "to register one's name with the secretary." At the same time it must be remembered that a large number of the schools which are still without any entrance requirements, though in most instances nominally connected with universities and colleges, are really private proprietary schools, and that with two or three unfortunate exceptions, they are not connected with universities of any standing. The high sounding sentences which I have read are not so much evidences of charlatanry, as of the fact that the faculties of the schools are conscious that the profession expects them to save the bar from illiterate persons. On the other hand, thirty-eight schools do require the applicant to prove that he has at least some preparatory education; three, Harvard, North Carolina and Leland Sanford, Jr., Universities require a college degree, seventeen an examination equivalent to admission to the Freshman Class of a good college, and the remainder an examination which could be taken by those who have passed one or two years in an ordinary High School. Though, as I have said, there is still much to be desired, no one can look at the record of progress since 1890 and not perceive that the tendency among law schools is toward an increasing demand of a preparatory education in those who would take up the study of the law. A university law school is not now considered in good standing unless its entrance requirements are equivalent to the requirements for admission to its college department, and, while these requirements vary somewhat as between two or more universities, in any one university it prevents the law students and the law department from being regarded with contempt by the rest of the university.

But I do not believe that any of our university schools of law which now have admission requirements equivalent to the admission requirements of their colleges, will or ought long to rest content with this standard. Indeed I think I put the matter correctly when I say that there is a very general feeling at a number of universities that a higher standard of

admission is required, and that the student on entering the school which trains him for his special life work, ought to come to that work with a more liberal mental equipment than is indicated by the ability to enter on a collegiate course. Already another university—Columbia—has announced its intention to require, after the fall of 1902, a college diploma; while I know that in other universities the possibility of a similar requirement is being discussed.

Without criticising the step taken by Columbia, I cannot help regarding it as unfortunate that the present discussion regarding standards of admission among the better law schools seems to begin with, and to be confined to, the question: "Should we require a college diploma for admission?" It has always appeared to me that this is starting with what we may call a dependent question; that is, a question, the proper solution of which depends on the solution of another and much more fundamental question. It is indeed very natural that those of us who are connected with law schools now requiring a college entrance examination for admission should approach the question of increased entrance requirements by first discussing the desirability of requiring a college diploma; for up to this time all the standards of admission adopted have been standards of quantity not of quality. That is, we have always required the would-be student to pass examinations arranged by persons having no knowledge of law, the subjects themselves being selected without reference to any special requirements, if any there be, of the law student. Yet it would seem proper that before law schools require their students to attain a certain scholastic standard, especially when that standard involves as much time and labor as is represented by a college diploma, that the faculties should first ask themselves, whether the studies prescribed as necessary to obtain this degree by college faculties, are adapted to the work which is required of the law student. In other words, the first duty is to inquire what information, what kind of mental training, is necessary for one who would study law? We cannot expect a college faculty to investigate this question. Lawyers, and especially those who teach law, are alone qualified to decide the best mental training of the would-be law student. If

we do not decide the question no one will decide it for us. After we have determined what training the prospective student of law should have, then, and not till then, can we intelligently take up the question where the education we desire can best be obtained, and what evidence law schools should require of the man who comes to them to study law, that he is prepared for his work. In short, we have first to answer the question "What is the proper preparation for the student of law?" before we can take up such a secondary question as the wisdom of requiring a college diploma for admission to our law school; and the primary object of this paper is to discuss the first and more fundamental question.

How then shall we solve the problem of the proper preparation of the would-be student of law? Must we not first examine the character of the material on which the law student and the lawyer have to work, and the nature of the mental processes through which he must go in order to solve the real problems of that work? A preparatory education should seek to prepare the mind for the real work which the mind will be called upon to do. Stated in this way the proposition would seem, as I believe it to be, axiomatic. And yet it is a truth which we all need to keep constantly in mind, for nothing is more popular and plausible than what we may call the may-be-incidentally-useful idea in preparatory education. Every now and then something is recommended to the would-be law student from what is called a practical standpoint; shorthand is a good thing because quick notes may be taken in court; bookkeeping, because a client may want you to examine his books; Latin, because the student will find the names of writs and some of the maxims of the law expressed in that language; government, because perchance as a lawyer he may go into politics. What makes such suggestions all the more plausible is that we all must admit that the reasons advanced are good reasons. It is true that shorthand aids us in the taking of notes; that in many cases a knowledge of bookkeeping is an assistance to a lawyer, and that if one knows Latin he will find no difficulty in extracting the meaning from a legal maxim expressed in Latin. The real trouble with all such suggestions is that they lose sight of the fact that education is always a choice of goods, not a choice be-

tween good and evil. It takes time to acquire knowledge. We have only one life to live. That which is not the best expenditure of time is a poor expenditure of time. While we may admit the incidental usefulness of shorthand or bookkeeping to a lawyer, in contemplating a proper course preparatory to law, one should first try to determine not the knowledge which is incidentally useful, but the training which is essential in order that the mind may grasp the real problems of the law. That these problems are not the rapid taking of lecture notes, the keeping of books or the correct translation of the Latin names of writs, it is unnecessary to point out. Indeed, when we consider the amount of time necessary to acquire even a superficial knowledge of Latin, to hear a lawyer advocate the expenditure of this time by the would-be law student on the ground that it will enable him to translate the occasional snatches of old-time pedantry found in the reports, would be laughable, if it did not indicate a total lack of any real thought on legal educational matters.

Turning to the work of the lawyer, we find first that the materials with which he has to deal are the facts of his clients' cases, and the recorded decisions on facts more or less similar to the cases which his clients bring to him. This material is all social material; that is, it relates to men in society, their relations to one another and to their property. The particular instances or cases of the law are all records of human actions and the obligations which result from those actions. From this material the worker in the law must induce his principles, and deductively apply them to the facts of the particular case before him. That legal principles are inductions from particular instances is not peculiar to the law. This is also true of the principles of all other sciences. Neither is it peculiar to the law that the material on which the student works is not identical with the material of any other science. Each science has its own peculiar field of facts in which the devotee must work. What is peculiar to the work of the lawyer, however, is that his principles are rather expressions of tendencies than exact statements of universal truths. The laws of physics, of chemistry, of mathematics, are of universal application. This is never true of a

legal principle, no matter how carefully expressed. Take for example the proposition that a man is bound by his contract, or the proposition that he can do what he likes with his own, or that he is liable for the injuries he knowingly inflicts on others. None of these are universally true. Though of wide application they are nothing more than usually predominating tendencies, and the difficult legal work is the work on cases which apparently fall under two or more conflicting principles. Take the last two principles above stated: they both apply, but with opposite results, to the case of one who seeks redress for an agreement between two others not to sell to him. The difficulty of the proper decision is not in the induction from which the principles are obtained, or in the deduction which applies one principle admitting it to predominate, but in the "judgment of tendencies" which determines which principle in this case should predominate. Thus in addition to the inductive process by which the principle is derived, and the deductive process by which the lawyer applies the principle to his case, there is in every case of real difficulty a mental process to be gone through which involves a judgment as to which of two apparently opposing principles will predominate and govern the particular case to be decided.

If I have described properly the mental work required of the law student and lawyer, it would seem to follow that the kind of mental preparation which the law student primarily needs is that which will enable his mind to deal with legal material; to make inductions and deductions from that material, and, primarily to weigh tendencies; that is to say, to determine from among several principles which are applicable to the case, the particular one which should govern it. If this is the special mental training wanted, it does not require an extended investigation to ascertain that this training is not found in the study of mathematics, in the physical sciences, in biology, in literature, or in the study of modern or classical languages. The mathematician begins with assumptions which he regards as self-evident. Each step of his reasoning is demonstrably right or wrong. If probabilities enter into his work, it is only because physics, or chemistry, or astronomy, has failed to furnish him with abso-

lutely correct premises. Mathematics may have a value to all who use their brains in that it inculcates the necessity for careful deductions, but beyond this, for the work of the lawyer, it has no special significance. Physics and chemistry, besides the information they impart, train the hand and eye in the handling of certain classes of material things; but the classes of material on which the physicist and chemist work bear no resemblance to the social material of the lawyer. The study of biology, or nature in any of its manifestations, increases the power of observation of external objects, and if carried far enough, increases the power of generalization or induction. All this improves the mind, widens the mental vision and increases our capacity for enjoyment, but it has no direct bearing on the peculiar mental work which the law student and lawyer is called upon to do.

While I think many will agree that there is no direct analogy between the principal mental work of the lawyer and the mathematician, the physicist or the naturalist, I am prepared for some dissent when I make a similar assertion in relation to the work of the student of language or literature. It will be observed, however, that I have not stated that mathematics or physics should form no part of a lawyer's preparatory training. Neither do I say that the study of language or literature should form no part of this preparation. I am merely pointing out that, like mathematics and chemistry and biology, the mental work involved in the study of language or in the study of literature has no direct connection with the principal mental work of a lawyer or law student. In the first place, the materials on which the student of literature and the student of languages works are totally different in kind from that on which the lawyer works. Literary expression is the product of man's effort in a particular direction, just as his house and ships are the products of his efforts in other directions. Cases, the material of the lawyer, on the other hand, are the record of the actions of men in society and the consequence of those actions. One is the result of effort on the part of the individual, the other is the relation of individuals to each other. In the same way, in the study of languages, what has the proper translation of a sentence to do with what man will or ought to do in relation

to other men? It is true that a proper translation is often the result of a comparison of other and similar sentences, but in this work there is but a small element of the judgment of conflicting tendencies; and the material on which such judgment must be passed is so dissimilar from the material of the lawyer, that exercise in one class of judgments can be but little preparation for work in another. The study of language and literature has indeed a special claim on the would-be lawyer. But this is not because it has a direct bearing on the peculiar mental work of the lawyer; but because the material of the law is embalmed in written sentences, and work in languages and literature increases our ability to obtain the full meaning from a sentence. Again, such work increases our ability to express ourselves accurately, clearly and forcibly, and when the lawyer reaches a legal conclusion, or wishes to advance a legal argument, that is, after his real mental work on a legal problem is done, the ability mentioned is of great value to him. While it does not make him a great lawyer, it does aid him to make the most of his legal ability. In the sense explained, therefore, the study of language and literature has a place, and an important one, in the preparation of the lawyer for his life work; but it should always be borne in mind that these subjects have no more direct bearing on the training of those mental faculties necessary to the solution of the problems of the law than biology or chemistry.

This direct training is, I believe, alone found in the other social sciences. Law is one expression of our civilization. An accident of our educational system has served to make us separate law from economics, sociology and history. We all recognize physics and chemistry as forming a group of sciences which have to do with physical phenomena, the different branches of biology as having to do with plants and animals, sociology, economics and history as having to do with the social life of man. But the fact that the law had reached the dignity of a science long before the other social sciences; the fact that in England, until recently, Common Law was not systematically taught in the universities, but had to be picked up in the courts and inns of court, has led us to look at the law as something which has no relation

to any other science. The fact remains, however, that the material of the lawyer's study, while of course not identical with that which must be handled by the economist or the sociologist, or the historian, is like them in that it is the record of events of man in society, from which events rules determining future cases are evolved.

Not only is there a similarity in kind between the material of the social sciences, but there is also a similarity between the character of the necessary mental operations of the lawyer, and those of workers in the other social fields. In all the social sciences the so-called principles or laws, as we have pointed out is the case in law, are merely expressions of tendencies. The difficult work in each is to determine the principle which will prevail in a case which appears to be subject to two or more conflicting principles. In other words, in each of the other social sciences, as well as in the law, there must be the mental operation which we have called the judgment of tendencies. Take for instance a question in economics. What will happen if a particular tariff is placed on a certain commodity by Act of Congress? The answer involves a judgment of which among several results tending to be brought about by the Act will predominate. Economic opinions, as legal opinions, often practically amount to certain predictions, but the real work of the economist, as the real work of the lawyer, consists in estimating the probabilities of the relative strength of conflicting principles. What is true of the work of the economist and the sociologist is true also of the work of the historian, so far as that work is the judging of the causes of historical phenomena. Of course, when the historian is engaged in ascertaining whether a particular document is genuine, or the probability of the past occurrence of a particular event, he is doing mental work which bears no resemblance to the mental operations of a lawyer. He is passing judgment on material which is not the record of actions of men in society, but rather physical phenomena, the handwriting of the document, the spelling of the words, and the texture of the paper used.

Not only is the mental work of the lawyer and the worker in other fields of social science essentially the same, and the material used of the same general character, but since the

law is one expression of our civilization, in order that the student may obtain a grasp of its principles, and the nature and cause of its growth, he should have a mental concept of our civilization as a whole, the character of its development, its fundamental tendencies, and their ultimate causes. This can only be obtained by one who has more than a mere superficial knowledge of economics, sociology and history. The public policy which lies at the ultimate basis of our law is found in our social and economic conditions. History, political science, economics and law have therefore a closer relation to each other than physics and chemistry, than Latin and Greek, or than zoology and botany. In addition to the fact that the material is of the same character and the mental work of the student in each the same, the information acquired in the other social sciences not only throws a direct light on the problems met with in the law, but gives a mental picture of the movement of the social forces which would seem to be necessary before a student can adequately handle the more difficult problems of legal science.

If I have correctly pointed out the similarity between the mental work in the different social sciences and their dependence on one another, it would seem to follow that in preparing for the study of the law, while we should lay some emphasis on the study of language and literature, the principal emphasis should be placed on the social sciences. I do not wish to be misunderstood. I do not mean that mathematics, the physical sciences, or the training of the eye and hand should form no part of the liberal education of the lawyer, neither do I admire the German system which carries specialization so far that at the age of twelve a boy must choose his profession. On the contrary I believe that our primary educational system should contain something of each of the great branches of human knowledge, that every boy and girl should have sufficient of each, not only to enable them to obtain something of the peculiar mental training which each affords, but to enable them to ascertain the thing for which they are peculiarly adapted. And I am of the opinion that, except in rare instances, under our modern American primary system, it is impossible for the average boy to know what he is

adapted for unless he carries the different branches of knowledge at least as far as entrance into our more advanced colleges, and that, furthermore, in many cases it is impossible and therefore improper for a young boy or man to choose his life work intelligently until he has had at least two and in some cases four years of college work; but with all this we, as lawyers and teachers of law, have really nothing to do. When a man should choose a profession is an individual problem. On the other hand, how far different subjects should be compulsory on all students and when the power of the student to elect his own liberal course should begin; that is, whether it should be in the High School, the Freshman year at college, or the Sophomore or Junior year, are general educational problems with which we again, as persons interested in the training of men for a special work are not called upon to decide. Our province is, I believe, clearly defined. What do we want the man who comes to us to study law to know? Of course we want him to have carried each branch of education far enough to be sure that he chooses intelligently. But having chosen and having determined to be a lawyer, then I think that before he comes to the study of the law, those of us who are connected with law schools should insist that he has more than an ordinary knowledge of literature, and some knowledge of language; but above all that, without being an advanced specialist in any of the social sciences, he should have carried his studies in these subjects at least as far as the present undergraduate courses in our more advanced colleges.

It may be said that the stress which I have laid on the study of the social sciences as a preparation for legal work, while it may be proper, has no better basis of proof than the apparent analogy between the mental work of lawyer and laborers in other social fields. In other words, that there is no statistical proof. This is true. I am not aware of the existence of any statistics full enough to warrant a conclusion as to the relative value to the law student of different subjects of preparatory study. But is not the argument by analogy which I have used, in default of statistical proof to the contrary, sufficient to dictate a present policy for our professional schools?

What statistical information we have been able to gather at the University of Pennsylvania is at least suggestive. We find that the general average obtained in our examinations by our high school students is only from three to four per cent less than that obtained by our college graduates. If we confine our observations of college graduates to those who come from the larger universities, the per centum of difference is about five. The difference in the per centum receiving honors and the per centum of failures is slightly more favorable to the college men; that is, more college men receive honors and we have fewer failures among this class than among high school graduates, and the difference between the two classes in this respect is more marked than is the difference in the average grade of all college and all high school men. But in view of the fact that the average college diploma represents at least three years more of preparatory study than the average high school diploma, there should be a greater difference between the two classes. On the other hand, with rare exceptions, the leaders of our classes are college graduates who have, during their college courses, laid special emphasis on the social sciences or on languages. On the other hand, among our high school graduates we find that men with what is called an industrial training are very apt to fail. In other words, while the statistics we have gathered are wholly insufficient to base any positive conclusion on, yet so far as they go they indicate that from the standpoint of the student of law, the character of his preparatory study is important, and that a course in college which lays emphasis on the social sciences or languages, or both, is productive of the best results.

If the conclusion at which I have arrived is correct, it will be natural for those of us who are connected with law schools having admission requirements equivalent to college admission requirements, to ask ourselves whether it is possible for us, in addition to our present requirements, to insist that our students come to us with additional knowledge of literature and language, and a special knowledge of history, sociology and economics. The answer to this question will depend somewhat on the number of years which a student must add to his high school work. How many years additional study

beyond the ordinary high school graduation is then necessary to produce the kind of liberally educated man that we need? Are four years necessary? I do not think so. While I have deprecated the effort to begin specialization at an early period, I believe it to be true that if one knows what his life work is to be, he can obtain a liberal education adapted to the technical education which must follow his liberal studies in a shorter time than if, while obtaining the last part of his liberal training, he has no conception of what he is going to do, and therefore probably lays emphasis on studies which, while liberalizing and useful, are not more so than others which would bear more directly on his work in life. While perhaps the majority of the sons of wealthy parents do not choose a business or profession until near the end of their college course, the average boy who graduates from our High Schools knows at his graduation whether he intends to study law or not, and for this class, which is the class that as a whole now passes directly from the High School to the Law School, it would be possible to reduce the length of time which they should spend in college, because from the start they would know the kind of a liberal education they desired.

Admitting that it will not be necessary for the average high school graduate to spend four years in college to obtain the liberal education indicated, it is nevertheless true that he will have to spend at least two years, or probably three, before beginning his legal studies, and the practical question is: Can the law student of the near future be made to do this, not those who come to a few great universities, but generally? I think so. My experience leads me to believe that the real difficulty in persuading the average high school graduate of nineteen to take a course in college before taking up the study of law is not so much the expenditure of time and money involved, but the difficulty of persuading him or his parents that such a step is essential. So long as they think that a college course has no direct connection with legal work, while they may admit the theoretic desirability of a college training, it is indeed difficult and often impossible to induce the boy or his parents to undergo the necessary sacrifices to obtain it. On the other hand, I have found that if you can

get into the minds of the boys and their parents the fact that what you want is not so much this indefinite thing known as a college course, but a knowledge of history, of economics and sociology, because of the relation of these things to law, it is not so difficult to persuade the would-be law student to go first to college for at least a partial course..

My point is that it is possible for all good law schools to pass beyond their present requirements for admission, even where these requirements are now equivalent to a college entrance examination; but that this result can only be brought about by law school faculties having a definite idea of what they want their students to know. Law schools generally cannot hope to be able to insist upon their students first going to college unless they have a definite idea of the principal subjects which the student should study at college, and be able to show some definite relation between the college work and the law school work. They cannot insist on a college course as an indefinite thing, but they can insist on their students being prepared in particular topics; and I believe that this insistence will result in a short time not only in the requirement of a college diploma, though the diploma may be gained in less than four years, but in a diploma obtained as the result of a college course which, while liberal in the best sense, has laid special emphasis on particular subjects. I am optimistic enough to believe that we shall soon see a larger number of our schools of law in all parts of the country rapidly moving towards the point where they will demand of those who would enter, a liberal education better than that now acquired by the average graduates of our best colleges, and that this result will be obtained by insisting on a liberal education which bears a definite relation to the work which the student of law and the lawyer is called upon to do.

William Draper Lewis.