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THE LAW AS AN EDUCATIONAL FACTOR *

In the treatment of my theme I will be mindful that brevity has the sanction of custom in the preparation and reading of papers at the annual meetings of your association.

In developing the subject chosen for my paper, I will first touch upon education in general, and then undertake to show, in the second place, that an education can hardly be called finished, in a strict sense, without at least an elementary knowledge of the law.

First of all, then, let us inquire "What is education?" The question has often been asked, but seldom satisfactorily answered. As in the case of another word of equally vexed meaning—the word "civilization"—there appears to be no generally accepted standard for it. That which constitutes education in the opinion of one person may be far from it in the estimation of another, just as our conception of civilization may not square at all with the standards of the Asiatic, the African, the South American and even the European. Our civilization might be as unsuited and disagreeable to them, in view of their fixed habits and environments, as theirs would be to us.

Like the law, the mutable standard of civilization usually adjusts itself to the conditions and wants of men and nations. And every careful observer knows that these vary from time to time, and are subject even to radical changes. A nation may be committed to a policy of peace to-day, and to-morrow spontaneously for war. There is nothing more fickle than the mob, save possibly the wind. As Horace Greeley says: "He who praises to-day may curse to-morrow." Whole communities seem at times to become insane in their wild, turbulent and intolerant advocacy of things that in cooler moments, or on second thought, they would disavow and re-

* A paper read by Col. William Hoynes, now Dean Emeritus of the Law Faculty of the University of Notre Dame, at one time before the Indiana Bar Association. It is reprinted here because of its merit.

puciate. Such exhibitions of popular feeling afford evidence of infectious diseases of the mind, as well as of the body. As epidemics sometimes sweep over the land, causing suffering, distress and death, so these diseases of the mind may assail communities and nations, causing a craze not less blind than vicious, not less cruel than fanatic, not less dastardly than detestable.

It may be stated, however, as a general proposition that education and civilization are closely allied, and that without the one there can not be much room for the other. To educate consists in exercising the faculties in such way, by instruction and discipline, as to develop the natural powers and render them efficient to the fullest extent practicable. In short, education aims at attainment to the highest powers and qualifications within the scope of man's capacities. And yet the natural gifts of some men surpass in brilliancy, power and resourcefulness the acquired knowledge of others. Some of those most noted in our history, not excepting Washington and Jackson, Clay and Lincoln, attended only primary schools, and studied in these but for a short time. The noted philanthropist, Peter Cooper, attended school for less than a year in his whole life; although, after the founding of his institute for the free education of poor boys, he was wont to say:

"If I had such advantages as we can give the poorest boy now, how much more could I have done!"

One of the ablest lawyers and most learned men in the state of Wisconsin, a man of charming personality—one who served his country with conspicuous bravery in the civil war and conspicuous ability in congress—found occasion in the course of a correspondence on other subjects to write me recently that he had never been inside the walls of a university or college, and that he had received but an ordinary school education. Yet in the Latin, Greek and several of the modern languages he is exceptionally erudite, while in his general education he deserves to rank as one of the most

accomplished scholars in the northwest. He attained to his enviable rank in scholarship by private study, and without the aid of a teacher.

On the other hand, there are many persons whose privilege it is to write in bewildering array and variety after their names the collegiate and university degrees and titles they received; and yet, considering their educational advantages, the want of tact or common sense exhibited by them in dealing with the practical affairs of life is hardly less than amazing. Presuming to know much, their acts and the opinions they express in regard to matters demanding some vigor and originality of thought prove clearly the narrow range and unreliability of their reasoning powers. You would expect even school-boys to show as much adaptability and intelligence in facing the difficulties and surmounting the obstacles to be encountered in the great world of enterprise and action. Possibly Steele had such persons in mind when he wrote:

“He that wants good sense is unhappy in having learning, for he has thereby only more ways of exposing himself; and he that has sense knows that learning is not knowledge, but rather the art of using it.”

In these instances I refer, of course, to the exception, and not to the rule. I seek only to show that some minds may soar to the stars of destiny on the wings of favoring opportunity and natural endowments. In such exceptional instances their innate abilities and strength of character seem to stand them in better stead than could mere educational equipment.

Personally, I yield to no one in recognition of the value of learning and in appreciation of its utility to the individual and the state. It tends, as I believe, to develop the intelligence and capacity of the citizen, to suppress lawlessness, to strengthen the sentiment of fraternity and union among the people, to eliminate from society the distrust and discord inherited from the savage state, to enhance the general welfare of the nation and afford assurance of the perpetuity of its free institutions. Not only do I concur with Daniel

Webster, in regarding "Education as the best police," but I go further, and say, with Thomas Jefferson, that "It is the only sure foundation that can be devised for the preservation of peace and happiness."

There have been and still are persons who entertain a contrary view, strange to say, but I am sure you will agree with me in believing that they belong properly to some benighted and oppressed part of the world rather than to a free and progressive country. Quite apposite to the subject is a quotation which I will venture to make from Bancroft. It consists in the language ascribed to Governor Berkeley, of Virginia, in discountenancing the spread of education among the people, and is as follows:

"The ministers should pray oftener and preach less. But I thank God there are no free schools nor printing, and I hope we shall not have them these hundred years; for learning has brought disobedience and heresy and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both!"

I can not undertake to estimate how many of you may have heard like sentiments expressed, but I myself listened amusedly more than once to a very learned gentleman who stoutly advocated opinions quite analogous to those of Governor Berkeley, although contending further that the poor are rendered unhappy and discontented by education, which opens to them a domain of hopes and dreams that their condition inexorably bars them from entering or realizing. There is a material loss of time and money in educating them, he contends, with the result only of making them discontented with their lot, a disturbing factor in the orderly development of social conditions and a possible menace to the ultimate peace and security of the state. To say the least, such sentiments seem very incongruous, and especially so when voiced by one who proudly points to the distinguished services of his ancestors in the revolutionary war—in short, an American of Americans. Such views, as I con-

ceive, are based upon some latent prejudice, and serve rather to amuse than to provoke argument. At any rate, I have regarded this advice of Sydney Smith as quite pertinent in the matter:

“Never try to reason prejudice out of a man. It was not reasoned into him, and can not be reasoned out.”

The stronger the current of the mighty river, the more certain the counter-moving eddies near its banks. And so in respect to the momentous question of education. The great current of opinion in its favor may not inappropriately be marked by the inconstant counter-flow of the shallows.

Ever pressing onward, ever inquiring and investigating, ever seeking greater proficiency and power to deal with and direct the forces of nature, the spirit of education and progress becomes at once an inspiration and stimulus to mankind. It calls ever for more light, renewed energy and increase of knowledge. At times it may take the form of what we call curiosity, as where designed to satisfy some trifling, transitory or prurient feeling of inquisitiveness. Of course, such would be a debased manifestation of it. But commonly it assumes an educational character, as where it concerns itself with useful facts additional to or explanatory of things known to us or things we are now seeking to know. It is a law of our being to be active, and the love of education directs this activity to the acquisition of a better knowledge of such things. Though the way be dark, yet we grope; though results be not visible or definable, yet we struggle tentatively toward them. This persistent impulse is the key to invention, progress, development. It stimulates and urges men on and on to the fullest limits of their natural powers. And it does not stop there. Some of the ulterior effects of its activity are briefly stated by Herbert Spencer:

“All observing instruments, all weights, scales, micrometers, verniers, microscopes, thermometers, barometers, etc., are artificial extensions of the senses; and all levers, screws, hammers, wedges, wheels, lathes, etc., are artificial extensions of the limbs.”

Thus has been increased and broadened beyond natural limits the scope of vision and physical power in dealing with the forces of nature. In response to this spirit we are constantly seeking to improve the things that concern us or the things we control. Hence the call for the correction of alleged evils in institutions and states; for improvement in machinery and short-cuts or economy in time and labor; for progress in educational concerns and systems of jurisprudence—in short, for advancement in everything. As thought is linked to thought, one awakening and energizing another, so in every field of human effort each act naturally leads to or suggests another, all contemplating improvement or advancement and tending toward ultimate perfection. Let us but consider, for example, how man has progressed, step by step, from the bare hand and crotched stick in planting to the improved grain drill and steam plow; from the rude flail and plodding hoofs of cattle to the steam-propelled threshing machine; from the rough concave stone or mortar for grinding to the complex machinery of the great mill; from the primitive ox-cart, with wheels of wood, to the monster locomotive that swifter than the wind sweeps by with its long train of gorgeously furnished cars; from the rude canoe and ancient galley to the magnificent steamship that plows the ocean and rules the deep, and from the simple hand-press in printing to the intricate machinery of the great steam power-press which, swifter than the enumerating capacity of any tongue, can print, fold and count even the largest newspapers.

I may repeat, however, that this is a law of our being. And all institutions must respond and conform to it, or suffer the fate of burial under the shifting sands of time. In their conformity to it we behold intense action, and competition, and experimental groping toward progress. Everywhere we behold men and nations reaching out and endeavoring to acquire greater strength, skill, proficiency and power. Things that are passive, helpless or unchangeable are swallowed up

or destroyed by the active forces of this incessant struggle. The same law that makes the minnow food for the fish, the robin prey for the hawk, the insect or worm a choice morsel for the robin, and the inoffensive lamb a dainty meal for the wolf or lion, makes also in the natural order, without the interposition of positive law and religion, the weak and defenseless among men slaves of the strong and aggressive, the careless and indolent mere tramps or pitiable dependents in competition with the active and vigilant, the ignorant and credulous unsuspecting victims of the crafty and unscrupulous, and weak or helpless peoples or states the conquered possessions of mightier and more warlike powers.

Education explains the present and reveals the future in the light of the past. It summarizes all history, brings to our knowledge all branches of human learning, exhibits the different nationalities of men in their social and political relations, makes known to us their languages and religious affiliations, familiarizes us with their literature and laws, discloses what they have done in the arts and sciences, and opens up the whole world of valley and mountain, forest and prairie, land and sea, to our contemplation and wonder.

What a broadening influence is thus exercised upon the mind of a true scholar! It enables him to trace the nearness of his relationship to all other men and creatures. He recognizes the mysterious fact that a certain kinship runs through all forms of life. He realizes how closely we are united in common traits and impulses. He knows, as Emerson says, that "In going down into the secrets of his own mind he has descended into the secrets of all minds." He becomes persuaded that, after all, we constitute but one great family, and finds himself concurring with Seneca in saying:

"We are to relieve the distressed, to put the wanderer on his way, and to divide our bread with the hungry—all of which is but the doing of good to ourselves, for we are only several members of one great family."

Such knowledge of men, while insuring a broad charity and indulgence of their weaknesses, yet gives increase of power in directing and dealing with them; and to no one should this be better known than to the lawyer, whose duty it becomes at times to sound every chord of human feeling and passion.

But, aside from the practical benefits of education, it affords pleasures surpassing those to be derived from probably any other source in life. It brings us close to the great heart of nature. It gives a new significance to every star in the sky, to every flower that blossoms in field or garden, to every tree and plant of forest or woodland, to every bird that sings in grove or meadow, to every rock that comes from mine or mountain, or lies in the way to indicate the area of the great glacial fields that antedated the field of Paradise.

And now, in the second place, let us consider more particularly the relation of the law to education; or, if you please, let us consider it as an educational factor.

The ancients regarded law as the invention and gift of heaven; and, as none of them explained and stated its scope and object more strikingly than Demosthenes, a free translation of what he says on the subject may pertinently be given:

“The design and object of laws is to ascertain what is just, honorable and expedient; and when that is discovered, it is proclaimed as a general ordinance, equal and impartial to all. This is the origin of law, which for various reasons all are under obligation to obey, but especially so because all law is the invention and gift of heaven, the sentiment of wise men, the correction of every offense, and the general compact of the state, to live in conformity with which is the duty of every individual in society.”

While that quotation may be regarded as sufficiently explicit in respect to the opinions of the ancients with reference to the origin of laws, yet Sophocles expressed so beautifully

a like thought in his poetical numbers that, at the risk of being chargeable with cumulateness of citation, I venture to quote from him:

“The laws dwell on high, heaven-born, ethereal, by Olympus begotten. Mortal man did not beget them, and never shall oblivion shroud them, for in them abideth the great God, who knoweth not the decline of years.”

In the earlier forms of government, theocratic in the main, the laws were generally proclaimed and enforced as of divine origin. The theocratic government of the Jews affords probably the most striking example. As we read and have been taught, Moses received the Ten Commandments directly from the hand of the great Jehovah, and God spoke to His people by the voice of His prophets.

For many ages such appears to have been the dominant belief in respect to the origin and source of the laws. In process of time, however, a tendency toward cleavage or separation became manifest and pressed its way to recognition. Thus the Scriptures came to be regarded as more peculiarly the word and law of God, while the common and statutory laws afforded indubitable evidence of their own origin and facility of adaptation to the changing conditions of business and the affairs of life.

Of course, the natural law, as ordained by the Creator, existed from the beginning, as it exists now, and as it must always exist. It is definable as a body of moral principles which reason itself teaches—principles binding on all men. According to the *Pandects*:

“Natural laws, which are observed alike among all nations, are due to a Divine Providence. They remain in full force and are immutable. But the laws which are enacted by individual commonwealths are wont to be often changed, either by the tacit consent of the people or by new legislation.”

To this law we ascribe the natural traits of parental and filial love, self-love and the instinct of self-preservation, social tendency and adaptability, the religious feeling, etc.

This law fixes immutably our stature, complexion and span of life. It prevails over all other laws. If opposed to it they must be declared by all courts to be without validity or effect. The chief aim of the laws enacted by communities and states is to supplement the natural law and protect men in the exercise of their rights under it. All men are invested by it with the absolute rights of personal liberty, personal security and private property. And yet without human laws and impartial tribunals of justice to represent the government in applying them, the government itself looking to their enforcement, these absolute rights would be ineffectual as against the depredations and aggressions of thieves, robbers and murderers. Hence as men in the natural state advanced in experience and knowledge, they realized more and more the need of security and repose through law and government. They saw that otherwise the acquisition of property or things of value through their labor would serve merely as a temptation to the cupidity of the indolent and criminally disposed, and be tantamount to putting a premium on their own lives. They saw that there could be no property nor general industry without security, and no security without law. Thus they were led step by step through the consciousness of a pressing necessity to give form to society and to organize government, clothing it with the powers which they had from nature to defend, protect and preserve their absolute rights.

The organization of our federal government affords so apt an illustration of how men originally entered into the social compact, instituting laws for their common protection, that it may be pardonable to touch somewhat in detail on the comparison.

When the independence of the thirteen original states was acknowledged by the British government, it was their privilege to organize thirteen sovereign states or governments, each possessing the powers that it now has, as well as the powers conferred by the constitution on the federal govern-

ment. In such case it could claim to be as much a separate and autonomous nation as France, Germany or Russia. But it was seen that by this course the states would be greatly weakened and their independence jeopardized. It was believed that antagonistic and selfish interests, foreign overtures and conspiracies, internal complications and civil wars, would at least impair their credit, undermine their influence and threaten them with subversion and loss of liberty. In view of the situation it was agreed that to avert these perils and maintain the common independence a union of all the states would be necessary, and that a central government to represent and act for them in specified relations would be indispensable. Hence the federal government was organized under the constitution, and the people of the states transferred to it by that instrument all the powers deemed requisite for the vigorous exercise of its specified functions—powers that if retained by the states would be likely to cause friction and discord, if not possible conflict. These powers were granted to the federal government, and the states can neither exercise nor claim them any more.

So did men yield up, on entering into the governmental relation, powers claimable under the natural law to protect and maintain their absolute rights. These are now formulated into laws for the common welfare and protection, and the agencies chosen to enforce them must do so with absolute impartiality and an eye single to what is right and just. Otherwise they would betray a sacred trust and violate the purpose of their creation. But it is gratifying to state that no institutions founded by men have been more constant and faithful in fulfilling the duties of the trust thus committed to them. Despite upheavals in the social status, corruption in office, revolution in states and subversion of empires, the courts have never ceased to be mindful of their obligations to society and government. Even under the most adverse circumstances they have admittedly been the ulti-

mate fountain of right and justice, the last hope of the oppressed and wronged, the last refuge of civic virtue and despairing patriotism.

The separation between what has been termed the divine and human elements of the law has proceeded so far that practically all ground for misunderstanding on the subject has been removed. The state deals with and punishes acts violating the express provisions of existing laws, while religion puts the seal of its condemnation upon thoughts deliberately entertained to violate these laws. Such thoughts can not be punished by the law of the land unless reduced to action. In this case it applies its prescribed penalty to the unlawful act, and if the thought leading to it can be considered at all, it is taken into account for the purpose simply of determining whether it should be viewed as criminal or tortious in its nature. A thought repeatedly entertained is very likely to grow into fixed purpose and force itself into action. From this point of view the service of religion in placing its prohibition upon it, as well as upon the act to which it leads, is conducive to the effectiveness of the law and the security and welfare of the public. So, while the church and the state have parted company in their relations to the law, the one dealing with revelation and the other with the law of the land, they are still mutually aidful in their work.

The law, needless to state, is not to be viewed as a system of arbitrary rules. It rests upon a consciousness of the needs of society. It adapts itself or is enacted with reference to these needs. To illustrate, when it becomes evident that a by-law is requisite in the administration of the business concerns of a corporation, the members meet and adopt it. And the same is true of the state, which may be viewed as a corporation on a large scale. The law draws its inspiration from the customs, social conditions and sense of independence of each people. Such is its guide, while the settled trend of transactions and affairs among men is its anchor.

Burke says that "Law is beneficence acting by rule," while Coke characterizes it as "The perfection of reason." Sir John Powell states that "Nothing is law which is not reason." Particularly apposite, however, appears to be Dr. Johnson's definition:

"The law is the last result of human wisdom, acting on human experience, for the good of the public."

Not only is the law the highest manifestation of human wisdom and sound reason, but it serves also as a most important educational agency. It teaches not only directly, but by its analogies, and fixes in the mind a habit of close reasoning. It tends to create a method of thinking peculiarly its own. It directs investigation to the origin of things. It insists upon concentration and continuity of thought in the investigation and proof of the subjects with which it deals. And the habit of reasoning to which it leads is not restricted solely to subjects of legal cognizance. It is applicable to all the relations of life. Who has not heard men speak of a lawyer-like treatment of a matter that has been skillfully developed and convincingly proved?

The rules of pleading and evidence offer the surest means of ascertaining the truth in litigious controversies ever yet devised by the human mind. With what facility they enable the trained intellect to separate the wheat from the chaff—the truth from falsehood!

While serving as a key to the treasury of truth, the law is yet, in a broader sense, a temple for justice and wisdom. According to a respected authority:

"'Tis the divine's part to convert by faith, the soldier's to overcome by force, the politician's to circumvent by art; but to the bar it especially belongs to prevail with men through means which their reason can comprehend, which their courage need not disdain, and which their honesty must revere."

The law is in itself a liberal education. There is no branch of human knowledge foreign to it. Each is subject to its care and supervision. In learning the law the mind

seems to grasp and become familiar with many of the subordinate or minor subjects within the range of its concern and protection. To illustrate, from an educational point of view: In pleadings we have logic; in evidence, a study of human nature and the means of ascertaining truth; in the common law, established customs and underlying motives of human action; in the statutory law, facts regarding the organization of states and the practical operations of government; in equity jurisprudence, the rules of ethics and the limitations of justly regulated conscience upon act and thought; in criminal law, sociology and prison reform and questions bearing upon the most vital issues of life and death; in real property, an outline of the feudal system and the subsequent changes regarding title that marked the growth of liberty among the people; in agency, partnership, insurance and commercial paper, a practical acquaintance with the varied and complicated transactions and affairs of the great business world; and, in international law, deep historic research and the relations to one another in foreign affairs of the civilized nations of the world.

The general education received in schools and colleges is undoubtedly an excellent basis upon which to build and develop in preparing for effective work and usefulness either in the professions or the more common pursuits of life, but of itself alone it bridges none of the chasms to be crossed in the rugged domain of competitive strife. A knowledge of this fact has led many educators to declare that a person having no training in the law lacks an essential element of a complete education. They know that there is a practical philosophy inherent in its very nature which teaches of the opportunities and obligations of human life.

In Rome it was deemed disgraceful for any person of the patrician class to be ignorant of the law. The most notable names in history, from Demosthenes and Cicero to the present time, have been associated with it in some measure or degree. Blackstone and Kent delivered their lectures not to law

students alone, but to those as well who sought a finished education by adding to their acquirements an acquaintance with the jurisprudence of their country. It is axiomatic that "Ignorance of the law excuses nobody," for "Every person is presumed to know the law." How, then, can an education be deemed complete without at least an elementary knowledge of it?

One who knows the law has a guide for every step he takes and every act he does. He knows that all agreements into which he enters involve the law of contract, and, familiar with the principles applicable to the subject, he is aware of his rights and duties and can state whether or not a valid agreement has been formed. If some act be done which ought properly to form the basis of a contract, he knows that the law itself is capable of creating one under the quasi-contractual relation. Proceeding further, if he be negligent in the performance of his undertakings, or the duties assumed by or devolving upon him, and injury to another results therefrom, he knows that he is liable to an action of tort, and may be required to respond in damages. Should he be attacked or deprived of his property by a thief, burglar or robber, he would know that a crime had been committed, and that, on complaint by him, it would be the duty of the state to prosecute and punish the offender. If his property interests are threatened with irreparable injury, or such as will not admit of adequate compensation in damages, he knows that he can have recourse to equity, which has power to forbid by injunction the apprehended wrong. In traveling, he knows the reciprocal rights and duties existing between himself and the carriers and innkeepers that he patronizes. In his dealings with partnerships, corporations and employers of men he knows the nature and range of his rights and duties and of their undertakings and responsibilities.

In short, he recognizes the fact that all progress would cease, civilization be turned backward and anarchy enthroned over chaos but for the saving hand of the law. He is conscious that theegis of its protection is extended both by night and day over the unborn child, the helpless infant, the thoughtless youth, the matured man, the aged patriarch, and him who has paid the debt of nature and gone to his final rest. He knows that we are all within its care and protection. By night and day, on land and sea, in valley and on mountain, in field and forest, in town and country, it is ever with, around and over us, ever assuring by its presence, ever guarding by its vigilance, ever protecting by its power.

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