The Place of Professional Education in the Universities

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INTRODUCTION OF THE CONVOCATION ORATOR.
BY ERNST FREUND,
Professor of Law.

When in the early part of the year 1902 the long-cherished project of establishing a law school as a part of this University was about to be carried out, and methods and men were being considered for the work of organization, our eyes not unnaturally turned toward the most famous and most successful law school of the English-speaking world. It was not chiefly or primarily the method of instruction which had become identified with the name of Harvard that challenged admiration — on that point the attitude of the University was that of the open mind; but the spirit of earnestness and devotion to their chosen work on the part of the students, for which that school was distinguished, it was deemed essential to transplant and reproduce in the school that was to be organized here. That spirit, we knew, could not be altogether the result of a system, but must have been due to the men who administered the system.

It was therefore decided at once and by common consent to invite one of these men — one of the younger men, but a ripe scholar and known to be capable of inspiring his students with enthusiasm — to invite Mr. Beale to assume the Deanship of the School of Law.

The qualification with which this invitation was accepted was in a manner unique and unprecedented: the University secured the services of Mr. Beale only for a term of two years, and circumstances made it necessary that part of this time should be spent by him out of residence. Still I am sure that all who are connected with the Law School are agreed that experience has demonstrated the wisdom of even this arrangement — an arrangement which illustrated in a striking manner the spirit of good-will and cooperation existing between the great institution of the East and her younger rival in the West.

We are glad to have had this much of Mr. Beale, and we are sorry to see him part from us. This is the end of his two years' term, and his separation from the School closes the first and preliminary chapter of its history. This is not the time or place to speak of results or prospects; but I may be permitted to give expression to the gratitude which we feel for the help that he has given us, and to the gratification which has come from co-operating, though for all too brief a period, with one whose freshness and vigor of mind, and whose love of sound law, has been a constant stimulus and inspiration to his colleagues and his students.

Among the many good wishes which accompany him on his way home not the least is that he may have the satisfaction of watching from year to year the growth to greater scope and usefulness and fame of the School, in the founding of which he has played so conspicuous a part.
I have the honor of introducing Joseph Henry Beale, Jr., Professor of Law in Harvard University, Dean of the Law School of the University of Chicago, who will address us on the place of professional education in the university.

THE PLACE OF PROFESSIONAL EDUCATION IN THE UNIVERSITIES.1

BY JOSEPH HENRY BEALE, JR.,
Professor of Law, Harvard University, and Dean of the Law School, the University of Chicago.

One of the striking developments of university education of late years is the place professional schools are taking in the university organization. Only a few years ago they were without the gates, hangers-on, tolerated yet half despised by the true scholar within, to whom any study which could be made professionally useful was anathema. The connection of a medical school or a law school with the university was honorary—to the schools; the professional schools were often miles distant from the academic department; down in the city, whose air, too heavy and dense for real thought or scholarship, better suited the gross investigations of practical men. This divorce of the departments of pure scholarship from the departments of utility still exists too often; but the great progressive universities have come to a new sense of the solidarity of all learning, and the professional schools are being welcomed into the very citadels of scholarship.

But even the older and looser tie is a recent one. Any real connection of professional schools with universities is almost a matter of the last thirty years. Theology had from the beginning been a subject of study in the American colleges; and indeed the chief purpose of the foundation of our earliest colleges was to train scholars for the pulpit. But of the schools especially established for professional education in theology, few—and those not the most im-

1 Delivered on the occasion of the Fifty-first Convocation, held in the University Quadrangles, June 14, 1904.
lishment at Oxford of the Vinerian professorship of law in 1758. Blackstone’s work in that professorship was the inspiration for establishing our first professorships of law; but there, as here, the conservatism of scholars repelled the new learning, and law was not really adopted as a true branch of university education.

On the continent of Europe, on the other hand, law and medicine were the earliest established university studies, and have always held their place. The creation of professional schools as real and integral parts of our own universities may probably be traced directly to the European practice. For President Eliot, drawing his inspiration from Germany, first brought the schools into their present relation to the colleges. Columbia followed tardily twenty years later. Chicago is almost, if not quite, alone in having adopted this practice from the beginning. The change is the necessary result of the modern idea of the function of the university; viz., that it should teach everything which it can benefit the world to know—that is, all the truth. Theology had no difficulty in making its way as a branch of truth worthy of being taught; medicine and law found more difficulty, but the great medical and surgical discoveries of our generation have proved the real worth of that science; and the striking results of the metaphysical study of law, and the later conception of law as the science of right conduct, have secured its place as a liberal study. Education as a professional study naturally appeals to scholars. Pure science is in accordance with the genius of the age, and engineering and agriculture have been special subjects of legislative bounty. All these branches of professional work are now accepted as proper subjects for university instruction. One great branch of human activity, in which intelligence plays a leading part—that is, commerce—has not yet gained recognition as a fit subject for scholarly investigation, but such recognition will doubtless come before we are many years older. In short, in any line of activity that requires exercise of the mind, man is the better for being educated, and the universities are recognizing the duty of furnishing such education.

What, then, is professional education? We must not limit it to a training for the two or three professions which have long been known as learned, or even to the professions I have just enumerated. One’s profession is nothing more than the aim of his life, and it has no necessary utilitarian significance. It is common, to be sure, to use the word as indicating a calling by which a man earns his bread; but no scholar should be deceived by this use of it. The man who is fortunately able to devote his life to intellectual pursuits without thinking of any pecuniary return must be just as thoroughly taught, and ought to feel as strenuous a devotion to his chosen science, as the man who makes his living by it; and, on the other hand, it is just as important, to the world and to scholarship, that the man who practices a learned profession for his livelihood should act throughout his life with singleminded devotion to truth, as for one who is a student without the thought of gain. Whether one’s purpose in life be to teach, to discover, or to enjoy, the study of his chosen subject is his profession—the study of the humanities or of pure science just as much as the study of law or medicine. The science to which a man devotes his life must be pursued with the same devotion, whatever it be. All highly specialized study is professional; and every such study, pursued in the spirit of truth, is pure scholarship. Pedantry and chicanery are the real narrowing things, whether they curse the study and practice of law or of literature. The scholar must learn to be a doer of worthy things; not in order to earn his bread, but because production is a function of scholarship.

But if professional studies are to take their place in the university, they must be pursued in the spirit of true scholarship; the university has
now, no more than before, a place for instruction which is merely to train one for a trade. As a wise man, himself at the head of a great professional school, has said:

No university has the right to maintain any school in which the primary object is not to make the pupils scholars in some high sense of that term; in which learning is not to be loved and honored for its own sake, as well as for its practical uses; the atmosphere of which shall not be highly academic; in which much shall not be taught which the student may not have reason to employ in the early stages of his professional career, or perhaps in any stage; in which more importance shall not be attached to the mastery of principles than to the gaining of information or to the acquisition of precepts, formulae, and the useful knacks and devices of a trade.

Or, in the fine phrase of Mr. Justice Holmes, used of one kind of professional study:

The business of a university is not to teach law or to make lawyers; it is to teach law in the grand manner, to make great lawyers.

To bring about this high result, the professional school must take students whose previous study or experience has so matured them in the life of the mind that they may both desire and understand professional scholarship, as distinguished from the mere handicraft of a profession. In one sense it is immaterial how such maturity is obtained. The great majority of students will get it in college; but an able and determined man may acquire it for himself.

The students being competent, the instruction must be suitable; which means that it must be directed to scientific investigation, not to mere information about the use of tools of trade. The student is to be a scholar, not an apprentice; the master must enlist the disciple’s devotion to truth, not “shoulder his crutch and show how fields are won.” Every study, whatever its ultimate end, is scholarly only if it communicates from the heart of the master to the heart of the disciple the unquenchable fire. In scholarship, as in religion, neither circumcision availeth anything, nor uncircumcision, but a new creature.

The spirit in which professional study must be carried on is the same as the spirit of all scholarship—to know the truth and to extend its borders. For what is scholarship but utter and single-hearted devotion to the truth? To other men other good seems the ideal; some follow beauty, some love, some duty. But to the scholar each of these good things is but some aspect of truth. Beauty is the shining of her face; love is the beating of her heart; duty is the path in which she walks. But Truth, his mistress, is the sum of all good things. He who has looked upon her, face to face, cares no more for lesser things.

University instruction, then, must not consist in the communication of facts or in teaching the knack of doing things; it must create a new spirit in the student, mold his mind, and touch it with enthusiasm. If so carried on, professional instruction is profoundly liberalizing. The inextinguishable zeal once kindled, the scholar can never more be as he has been. The scholar of medicine, law, education, theology, touched with the enthusiasm of his master, is free of the commonwealth of learning. His chosen science has become his joy and his life. Whatever fate has in store, he has within himself the scholar’s reward, the source of satisfaction, independent of mere worldly pleasure or success; it is the object of his ambitious hope to keep the torch alight and to pass it on.

If it is true that every study specially pursued as a preparation for the work of one’s life is professional, then it would follow, not only that a university must give professional instruction, but also that no scholar’s education at his university must cease until professional education is obtained. If the purpose of the university is not to fit human intelligence for its work in the world—its work of advancing the truth in every branch of human activity—it cannot justify its privileges. The university has not been so highly endowed to train drones and shirkers. If the purpose of the university is to fit human intelligence for its work in the world,
no man must leave the university until his mind has not only been broadly cultivated and fitted for the seed, but until the seed has been sown. Professional education, in the broader sense, is the necessary keystone of the arch of education.

"Every shoemaker to his last." You have been thinking that, while I may know something about the education of lawyers, I am far from expert in general education; and, indeed, what I have most at heart is the education of lawyers. Let me then give briefly the creed of those of us whose profession is the teaching of law.

We believe, first, that law is a true science. This may not seem obvious to the layman, for even an educated man is often ignorant of the true nature of law. Law is not a collection of rules, more or less arbitrary; of statutes passed by some legislative body or enacted by the will of an absolute monarch. That part of law which has actually been formulated in the shape of statute is so small a part of all the law under which we live that it is hardly worth consideration. The greater part is the unwritten law, the common law, which covers the whole range of life. It governs every human act, protects every right, and so fills up the world that no act nor event can fall outside its scope. It is the science of what is right and just; not in the abstract, but in view of human conditions and of the nature of current thought. If a claim is made under the law, it must be determined, not ordinarily by the letter of an existing statute, but by the judgment of a court, which, after hearing the facts, acts in accordance with the principles of the common law; that is, in accordance with a system of reasoning based upon both authority and general principles of justice. Legal reasoning is a method of thought about right; having an ideal of justice which it constantly approaches; founded on the experience and authority of the past, but never hesitating in a proper case to depart from past authority in favor of a clearly apprehended approach to ideal right. The laws of natural science are fixed, while our knowledge of them is constantly growing. The science of human law is a more complex one. Its ideal is fixed; but while our knowledge of ideal right, like our knowledge of natural science, grows, the student of law must not only discover this new knowledge, but must enforce it upon the ministers of justice by reasoning and persuasion. The study of law, therefore, is the study, not of inert matter, but of a complex living and growing organism.

Not only is law a science, but it is a science well worth the enthusiasm and devotion of a lifetime. It is a science with a great and interesting history. Our law has grown with the growth of the English race, spreading as it spread, and broadening as it broadened from barbarism to civilization. It is the creature of the folk, the church, and the king, full of the life of the common people, the wisdom of the cloister, the experience of the king's ministers. To understand its present, we must learn its past with sympathy and appreciation.

The study of law, then, is the study of the history of a great people; it is also an intensely practical science. It lies at the base of human life, and all human affairs rest on it. To law we owe everything in which we are above the savage—security of life and of property, liberty and civil government, society itself, indeed, and the very education we are discussing. It is concerned with every function of civilization. To understand its doctrines, we must be familiar with the affairs of social and business life; for in studying law we are studying the most urgent current problems.

But law is not merely concerned with the past and present. As the science of right, it is progressive, always open to betterment, always testing its results in the scales of justice, always looking forward to a juster world which is to come through its improvement and growth. It has a place for the enthusiasm of the reformer and the prophet; for its constant effort, as we have seen, is not only, by investigation, to dis-
cover the truth, but by prophetic persuasion to bring it to pass. It is at once historian, economist, philosopher, scientist, and seer.

If what I have said is true, I have no need to argue at length the right of law to be included among the subjects of university education; but it must be clear that such a science studied in the university must be studied in university fashion.

What, then, is the true method of teaching law in a university? It must obviously not be taught as a mere handicraft, by putting into the hands of practitioners the tools of their trade and teaching the use of them. As a distinguished professor of this university lately said, it is not the true function of a school of law to teach future lawyers how to earn their living. Law must be taught as all sciences are taught—by touching the imagination, by filling the heart, and by re-creating the mind. It must be taught to students who really profess a career of useful thought and public service; not to youths who, in the intervals of running errands or dancing attendance at spectacular trials, find time to commit to memory a few arbitrary rules. It must be taught principally by men who have devoted their lives to investigating the truth, and to training others in its ways; not by men who, in the little leisure of an active life, seek rest and recreation in amateur instruction. It must be taught, like every other science, by putting the sources of knowledge into the hands of the student and leading him, by investigation, by comparison, and by the gradual formation of a scientific judgment on which he may depend, to make of himself a sound student of his chosen profession. The law fortunately lends itself readily to this sort of instruction. All the objective sources of knowledge of it lie on the printed page. The library is the laboratory of our science, and a great law library affords all the material which the student needs for his study. The task of the teacher is only to form and direct his judgment and kindle his enthusiasm. The original sources of our law are the decisions of our courts, the official depositories of legal learning; and only by a study of these decisions can we know the law as a science.

But, it is said, this is a slow and painful process; it is beyond the capacity of the student; it is a waste of time, for this work has already been done by the sages of the profession, and their conclusions may be read in their books. Do not study the enormous and confused mass of decisions, but read the lucid pages of Blackstone, Kent, Greenleaf, Washburn, and Story. After what I have said, it is not necessary in an assembly of scholars to labor the answer to this contention. It is our task to train lawyers in their science, not to give information to intelligent children. Do we study natural science from primers, or even from the writings of the masters? The child learns history from elementary treatises; the man, from the works of Freeman and von Holst and Mr. Rhodes; but the professional historian goes to the original record. So it is with law. Indeed, this method was known and practiced in the study of law long before it was recognized in other sciences. It was not Francis Bacon, but his great rival, Lord Coke, who said: "I hold him not discreet that will quaff of the streams when he may seek the fountains."

But if so, what of professional success? Is this the way, the world will ask, to train a man of affairs, one who can make his way in the world and win his way to the front? Do we desire to make scholars? Do we not rather desire to make lawyers who will win fame and fortune for themselves? Our answer must be twofold. First, that a university must not be directly concerned with the worldly success of her children. She must care only that they may deserve success in so far as high minds and noble aims and a zeal for the truth can deserve. No one has phrased this better than Mr. Justice Holmes:

The noblest of them must often feel that they are committed to lives of proud dependence, men who com-
mand no factitious aids to success, but rely upon unadvertised knowledge and silent devotion; dependence upon finding an appreciation which they cannot seek, but dependence proud in the conviction that the knowledge to which their lives are consecrated is of things which it concerns the world to know. It is the dependence of abstract thought, of science, of poetry and art, of every flower of civilization, upon finding a soil generous enough to support it. If it does not, it must die. But the world needs the flower more than the flower needs life.

But if this answer seems sentimental and little comforting to the inquirer, the second answer is perhaps more to the point. If the university is making no sad mistake in her methods, the lessons she teaches and the spirit she inspires are the best guarantees, not merely of intellectual satisfaction and pleasure, but also of worldly success. She does not do her work in order that it may bring success to her children; she only serves the truth, serene in the confidence that in the world, as in the cloister, the truth will win success. And this confidence is not misplaced. The world feels its need of the flower.

The world needs the flower; is that more than a mere graceful figure of speech? Has the flower a place in the actual business of life? Yes; for scholarship, as distinguished from handicraft, means a union of character, enthusiasm, and skill which results in the greatest of forces. What, compared to it, is the power of the water-fall, of steam, of electricity? Scholarship has harnessed the torrent and made the elemental forces its servant. What is the greater force of humanity? The soldier may conquer a people, but the scholar makes it peaceful, law-abiding, productive. Scholarship is the ultimate power back of all human endeavor.

And as with the sciences generally, so in a marked degree with law. Serving writs and running errands, even badgering witnesses and persuading juries, is work which can be well done by anyone with a certain mechanical knack. So far as that can be taught, it must be taught in the workshop, not in the university; and it is worth, and it earns, the wages of partly skilled labor. But legal scholarship, the spirit that makes great lawyers, the knowledge of things of the mind which is likely to win immediate recognition and is necessary to ultimate success, is not to be gained through the ear or the eye; it means hard work of the brain, both in thought and in exercise; it is hardly won; and its value and its rewards are correspondingly great. Such scholarship one untrained in the schools may, of course, win for himself; scholars were before the universities; but it is the function of the university to save scholars the cost and imperfection of self-education.

A university education in law gives a deep and self-mastered knowledge of the fundamental principles of law, practice in legal thought and reasoning, enthusiasm and happiness in professional life. For this combination of qualities the world is willing to pay, and does pay with liberal hand. There is no need of speculation on this question; the experiment has been thoroughly tried, and the university has proved her case. The full value of such training does not become apparent until the latest and best years of practice; but at the very beginning the world places a money-value upon the most scholarly university training which greatly surpasses the cost of the investment in education. The test of the market proves the soundness of the university’s faith.

These words, I am too well aware, are an unworthy offering to the great University which has done so much for me, for which I have done so little in return, for which my regard and love are so warm. But though my crude ideas are my own, the spirit in which I have spoken is the spirit of the university. It is our duty to train scholars for the businesses of life. That duty may we ever faithfully perform!