

THE STUDY OF LAW IN COLLEGES OF THE UNITED STATES.

PREPARED FOR A COMMITTEE OF THE AMERICAN BAR ASSOCIATION.

I beg to make the following brief report of what I have done with a view to making recommendations in regard to the study of law in colleges as distinguished from law schools,—what might be called non-professional legal study.

At the outset I should say that I have relied on the reports of the Bureau of Education for information as to what legal studies are now pursued in the various colleges. The advanced sheets from the report for 1890-91 which were issued at the beginning of the present year in pamphlet form may certainly be relied upon as giving a very complete summary at pages 63-68 of such instruction. This pamphlet was not issued at the time I began my work and I relied on an earlier and less complete report in order to ascertain the character and extent of instruction given in the colleges which are credited by the report of the Bureau of Education with offering courses in law. I addressed the following letter to the instructor in law in each college, where one or more branches of law appeared to be taught:

“CAMBRIDGE, MASS., Dec. 7, 1893.

“*Dear Sir:*—The American Bar Association, by a Committee, is endeavoring to make a thorough study of legal education in this country, and, as a member of this Committee, I have been asked to report on the teaching of law in schools and colleges aside from regular law school instruction.

“In the report of the Bureau of Education I find that your University is reported as giving instruction in (International) Law.

“It would very greatly oblige me if you would let me know how much time is devoted to this, what method of instruction is used, whether lectures or recitations from text-book, whether the subject is elective or required, what classes take it, what you think of its value educationally and as preparation for future study of the law, whether the instruction is given by a practicing lawyer, and any other facts of interest relating to the study of any branches of law in your University.

“Hoping that you may be able to give me this information without too much trouble, I am,

“Yours respectfully,

“SAMUEL WILLISTON.”

I received a large number of replies, many of them evincing considerable interest in my inquiries. From the information thus obtained certain generalizations are possible.

First, The subjects taught are almost exclusively International Law, Constitutional Law, Roman Law and Commercial law, and perhaps the order in which I have mentioned these subjects fairly represents the frequency of each.

Second, The subjects are made rather subordinate to the more ordinary studies required for the Bachelor's Degree. Many of my correspondents express regret at this.

Third, The apparent object of the instruction in Constitutional law, International law and Roman law is quite different from the object of the instruction in Commercial law. The object of the former studies is general cultivation. They are treated from a historical point of view. The instructors are frequently not lawyers. The object of the study of Commercial law on the other hand is entirely practical,—to fit students to deal intelligently with matters of business law. The instruction in this branch is usually given by lawyers. It is more commonly taught in the smaller colleges than in the larger ones, and more commonly in the southern and western colleges than in the eastern.

In giving an opinion of the value of these subjects in a college course the question chiefly to be considered is not their value as a preparation for future study of the law in a law school but the value to a layman of liberal education. The place for studies exclusively designed for those intending to be lawyers is a law school. Nevertheless there are subjects which, though forming part of a liberal education and not necessarily belonging to any profession exclusively, are especially important for a particular profession. I believe this to be the case with such studies as International law, Constitutional law and Roman law, with the qualifications as to the latter study which I shall hereafter make. The two former studies give the most valuable insight into history and politics and thereby are entitled to the consideration of every intelligent man, and the nature of our government renders it particularly important that a knowledge of elementary principles of Constitutional law, at least, should be understood by all. These considerations make it peculiarly important for the lawyer to have studied these topics. The study of Constitutional law from what may be called the historical point of view should naturally precede and furnish the foundation for the study of Constitutional law from a more strictly legal point of view in the law school. The right side on which to approach the study of the law is the

historical side, it is the safest setting which can be given to technical knowledge. The importance of these subjects is at least fairly well recognized. The only recommendation that can be made in regard to them is that colleges should not allow them to be crowded out nor belittled by other studies of the curriculum.

The subject of Roman law as usually carried on is probably less valuable. The course generally given seeks to acquaint the student with the technical principles of another system of law than ours at a remote period. This in itself is purely technical information and the student being generally ignorant of the principles of English law can hardly connect the information he acquires with his other knowledge in such a way as to make it valuable. Further, there are difficulties in the way of terminology and in the fact that the sources of the law are in a dead language which make it hard to accomplish much in the time which it is possible to devote to the study. The interesting letter of Prof. Collin of Cornell University which I append indicates what I believe to be an advantageous change in the method of conducting a course on this subject. Such a course as that indicated by Prof. Collin should, like the study of Constitutional law and International law, be part of a liberal education and is also the best preparation for a future study of the law as it exists to-day.

The subject of Commercial law or business law as it is ordinarily taught I cannot think has any place in a college course. It is neither a liberal study nor does it assist in the future study of the law. The object of such a course is generally wholly practical, not to train and enlarge the mind but to give a certain amount of technical knowledge. One of my correspondents, while speaking favorably of such a course, somewhat naïvely says, "It is most frequently, though not always, elected by those students who do not contemplate taking the regular course." To one who has had much to do with the special student this needs no commentary. That a little knowledge is a dangerous thing is not always true, but it is true of the law as a practical science. It is perhaps going too far to say that no man is competent to form an opinion on legal rights in any case without some knowledge of the whole law, yet so many and various legal principles may arise in an apparently simple case that it is certainly true that such a smattering of business law as may be learned in a course of a few weeks or a few months will be the most unsafe guide. The law as it is to day should be studied in college in a manner similar to that suggested with regard to the law of the past. That is, its development historically and the most fundamental and elementary principles at the

basis of our system of law should be studied; the whole object being not to make the student a lawyer or competent to deal with any class of legal questions but rather to give him such a general knowledge of the laws by which he is governed as an intelligent citizen should possess.

Rather than elaborate more fully I append such letters and portions of letters received from correspondents as seem most suggestive.

“ DARTMOUTH COLLEGE,

“ HANOVER, N. H., Jan. 20, 1893.

“ *Dear Sir:*—Collegiate instruction in elementary, constitutional, and international law, if it is wisely planned will not trespass upon the provinces of the law school, but will suffice to yield to collegiate students knowledge of the essential facts and fundamental principles of the civic polity of the American Commonwealth, and of its relations to the National Commonwealth and of those of the Nation to the Family of Nations. Such elementary knowledge of law as this must be deemed a part of a liberal education of all citizens of a representative republic. In particular such a course as (1) Constitutional law, if conducted by a well-trained, experienced and wise teacher, who is familiar with the history of institutions, political theories and comparative constitutional law, seems to me well adapted to serve collegians as a disciplinary exercise. Specifically, it tends to develop the power of reasoning by its constant requirement of patient analysis of opposing arguments and vigilant search for fallacies; it also, by discovery of the results of the application of principles or interpretation of principles once disputed, furnishes means of testing the premises and logical method of the parties to great political controversies. In addition, such a course in Constitutional law has large value as an informing study. The increasing complexity of our social structure, the interdependence of economic, political and legal phenomena, and the irreparable injury that may be wrought in a democratically organized state, not only by ignorant electors but by half educated leaders, make it in my opinion, the duty of the American College to prescribe for all its graduates as a minimum requirement for good citizenship, thorough acquaintance with our organic public law. As a preparation for the future study of law, such collegiate courses, in my opinion, may also have large though differing value. In particular, course (2) Elements of Law in Relation to Jurisprudence with a sketch of the Roman Law, seems to me to be fitted to aid all collegians who afterwards study law, both those who pursue that study by themselves or in law offices, and those who pursue it in law schools. The first class may be greatly aided by such a course because it sometimes proves to be the only available opportunity its members have, before admission to the bar, for obtaining any thorough and systematic instruction in the terminology and fundamental concepts of the law and for securing even a bird's-eye view of the whole legal domain and the relation of its different departments. The second class may be largely profited by such a course because (a) it tends through the knowledge which its members thus acquire of the terminology and the fundamental concepts of law, and the bird's eye view at least, which they so obtain of the whole legal domain and its different departments, to facilitate their immediate understanding of law school lectures, and to promote their rapid progress in the special topics in the law school courses; and because (b)

it tends to beget in them, before the law school is entered, the invaluable habit of searching for legal principles; and because (*c*) it tends to familiarize them with the outlines of, at least, one other important system of law besides their own—the Roman Law, and so, by furnishing materials for comparison, to enlarge their comprehension of English law, with all the resulting advantages which are described by Sir Henry Maine, in his essay on ‘The Roman Law and Legal Education,’ (Village Communities, page 330), and by Professor James Bryce, and by Sir Frederick Pollock, in their respective Inaugural Lectures, at Oxford.

“Yours respectfully,
“JAMES FAIRBANKS COLBY.”

“JOHNS HOPKIN'S UNIVERSITY,

“BALTIMORE, MD., Dec. 13, 1892.

“*Dear Sir:*— * * * It always seemed to me in Heidelberg that I was learning more history through the medium of international law and politics than in any other way. I have always valued this course of study as a practical means of teaching undergraduate students the most important facts in the line of the world's international, political, and economic development. As a branch of undergraduate work in our college course international law, historically considered, is regarded merely as a means of liberal training.

“Very truly yours,
“H. B. ADAMS.”

“STATE UNIVERSITY OF IOWA,

“IOWA CITY, Dec. 13, 1892.

“*Dear Sir:*— * * * It is plain to me that Constitutional Law in the general sense in which it should be taught in the college, and Constitutional Law as forming a part of a law course cannot be taught in the same class, the first being properly preliminary to the second.

“Yours very truly,
“EMLIN McCLAIN.”

“CORNELL UNIVERSITY.

“ITHACA, N. Y., Dec. 15, 1892.

“*Dear Sir:*— Until last year Prof. F. M. Burdick gave a regular course one hour a week during the senior year in Roman Law, by lectures and recitations. He kept his course quite closely to Roman Law proper, to the senior class. The learning of so many technical terms, especially by so many men who had never studied Latin, was a severe strain on the men, and, as we all finally concluded, required an expenditure of time and mental energy out of proportion to its importance as compared with other topics. We agreed that it was desirable for our purposes to give a more general view of the subject with less insistence upon the details and Prof. Burdick intended to change the nature of the course in that respect, had he staid here. But he was called to Columbia Law School in the summer of 1891 and we changed the name of the course to ‘Roman Law and Comparative Jurisprudence,’ as it now stands in our announcement, and I was assigned to the topic. I have gone much farther in generalizing the course than Prof. Burdick had intended to do, using Roman Law rather for illustration than for special study. My chief object is to bring

out the common features of societies in corresponding stages of civilization and of the laws they adopt. For instance I take the topic of the 'Law of Real Property in Primitive Society;' in the secondary stage of transition from communal to individual land-holding, so also of the Domestic relations. In this way while Roman Law is always a central topic, I give illustrations from Anglo-Saxon and early English, from the Hebrew, India and Continental Europe. I give copious references to leading works, especially to Maine's works, and expect my class in a spontaneous way and somewhat as entertainment and literary and intellectual diversion from the study of law proper, to get an acquaintance with the best literature in the field of history and philosophy of law. My course is given to the seniors and will take from twelve to fifteen hours of class room work.

"Very respectfully yours,
"C. A. COLLIN."

"YALE UNIVERSITY.

"*Law Department.*

"NEW HAVEN, CONN., Dec. 26, 1892.

"*Dear Sir:*—Instruction in Law is given in the Academical Department of Yale University as an Elective Study in the Senior year. Two hours per week are given to the subject during the entire College year. The class in Law usually number 120 to 150, it being one of the most popular electives offered. Of these about three-fifths expect to become lawyers; two-fifths look toward journalism or other professional or mercantile life. In the Fall term the class are in my charge; in the Winter and Spring terms they are taught by Prof. E. J. Phelps, late Minister to England, both practicing lawyers. The Curriculum is as follows: History of Law, Forms of Law, Legal Literature, Practice of Law, General Jurisprudence (all these by lectures), Elementary Law, Constitutional Law, International Law. (These by text-book and recitations). The lecture work is mine. Prof. Phelps has the recitations. In addition all law-students (in future) are required to read Blackstone's Commentaries, the works of Sir Henry Maine and either 'Markby's Elements of Law' or 'Holland's Jurisprudence' or 'Lorimer's Institutes.' All other members of the class are required to read the same, Blackstone excepted. To law students who do the required reading and pass satisfactory examinations a certificate to that effect is given which has been received by some courts as equivalent to a lawyer's certificate of one year's office study.

"I regard this work as very important educationally and during the few years it has been carried on here it has won high favor from students and officers in the University. As a preparation for subsequent legal study its effects are manifest in the men who come out of this course into our own law school. Their comprehension of the subjects there studied and the rapid progress made in all special departments of the law justifies the opinion that the elective of the Academical department has been to them invaluable.

"Truly yours,
"WILLIAM C. ROBINSON."

"WASHINGTON UNIVERSITY.

"SAINT LOUIS, Mo., Dec. 24, 1892.

"*Dear Sir:*— * * * I venture to go beyond your questions and suggest to you the great desirability of instruction to all students, or at least to

such as may elect it, in the general principles of Law—such instruction as Blackstone tried to give the gentlemen of England. It has long been my desire to establish a course, say of three hours per week for a whole year, which should be open to the older students in the University; but I have found an almost immovable opposition to this plan on the part of the members of the legal profession. When I was in Harvard I brought this matter up repeatedly. I will not burden you now with the arguments in favor of such a plan, but if the matter is to be debated I should be very glad to lay my views before any authority who would consider them. I should think that the American Bar Association would be the proper body to discuss such a plan as I suggest, and if they approved of it, to bring it before the leaders in education.

“Very truly,
“W. S. CHAPLIN, *Chancellor.*”

Samuel Williston.