
A Short Comment

on

The Ordinary Religion of the Law School Classroom

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Editor's Note:

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We are indebted primarily to Dean Cramton for his laudatory and probably successful attempt to reveal the existence of a large unexamined consensus in legal education: one which has assumed (in certain quarters) the certainty, if not the dignity, of a religion. There is little new contained in the article because most of its themes have been consistently reiterated for a generation by such diverse figures as Lon Fuller, F.S.C., Northrup and Cal Woodard.

As such, the article is a triumph of what the intellectual historian describes as "popularization", rather than any original contribution to thought. However, in an age when theory and abstract thought generally are held in such low repute, one must be grateful for whatever seizes our attention and focuses our fleeting glance on the more important and abiding issues.

The article correctly reveals the existence of a pervasive instrumental conception of the role of law in society. The lawyer has become a sword bearer wielding his instrument indiscriminately in pursuit of often hastily formulated goals, which are defined as socially desirable policy aims. The relationship between engineering and physical science is analogous to that existing between lawyering and social science. Of course, our reigning pundits give lip service to such ancient shibboleths as "The Rule of Law," never stopping to ponder that an instrumental conception of law inevitably focuses attention on the identity of the sword bearer rather than on the law's normative or substantive content.

Increasingly we view law as something to rule by rather than a body of normative principles to be ruled by. Legal instrumentalism is antithetical to the Anglo-Saxon Rule of Law notion as bequeathed to us by a tradition antedating the founding of this country. Simply calling an inherently arbitrary administrative impulse the rule of law does not make it so, any more than cursing the darkness produces light. In essence we are dealing with rival faiths; on the one hand there is social science and administ-

ration, on the other hand, the law as conceived by Blackstone, a reflection of the higher orders of reality.

Underlying the crisis in modern legal education is a precipitous decline in the idea of transcendence itself. Not only the sacred, theistic notions of reality, but also the secular Renaissance conception of transcendence. Ours is the first period in Western History that has rendered the grand debate between faith and reason a vestigial remnant of a less enlightened age. As a direct consequence relativity and reductionism in modern thought have produced a culture which is "lost in a forest of sign posts".

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Daniel Boorstin describes our contemporary dilemma as a severe timespace distortion. We know everything about this moment but our collective amnesia prevents us from fully appreciating the grandeur of our cultural and legal inheritance. In short, the problem is really the impact of modernity on prevailing conceptions of law and the means of educating lawyers. Such a reversal of the course of history from an obsession with the unseen to the current fixation with the seen has profound value implication for those whose ethical roots are deeper than the present century. We who believe strongly in the supernatural should at least be aware that five days a week we are implicitly or explicitly communicating religious values in the law classroom which are quite often irreconcilable with those we attempt to communicate in our various ecclesiastical undertakings. Awareness is not synthesis but at least it is the beginning of diagnosis.

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