LEGAL EDUCATION WHY SHOULD A LAWYER STUDY ARTS IN A UNIVERSITY?

Allison Dunham[*]

Professor Allison Dunham was a 1953 Fulbright Scholar. The Professor's scholarship was supported by the VUC Law Faculty in the following terms.

> *The Law Faculty of this College supported by the Law Faculties at Auckland and Christchurch make the following suggestion for a Fulbright Scholarship to New Zealand in 1953.*
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> *That a Scholarship be awarded to an American law teacher with experience in modern teaching methods used in American law schools. The holder would consider how far these methods may be usefully employed in New Zealand and advise us accordingly.*
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> *We would urge that the award be made for 1953 because by that time three of the full-time teachers at Victoria University College and the two full-time teachers at Auckland University College will themselves have been in the United States observing these methods for themselves. What is then needed and should not be too long delayed is a visit by an American teacher to New Zealand so that his impact on our own classes can be seen, his reactions to the effectiveness of his teaching be obtained, and a more rounded picture of what we can do, result. We are one and all convinced that the major contribution American Law Schools can make to our development at the present stage of our growth is on method: we have been impressed with the American law schools methods and want to adapt them, but to adapt them intelligently and after the fullest enquiry and consideration of difference between the American and the New Zealand scene.*

Both Professor Dunham's NZLJ articles ought to be read in the context of the battle then raging in the Council of Legal Education over the Profession's proposal that Arts units be reduced and Professor McGechan's proposal that the control over examinations be given to the academics.

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While most of us proudly assert that ours is a "learned profession", we seldom agree among ourselves about the training required for becoming a member of that learned profession. There is some agreement about the professional requirements in legal education, but there is little consensus about *why, how much,* and *what* non-professional training a law student should have to qualify him as "learned". We can qualify a young man as a legal artisan by office training alone, by a combination of professional training only in a University. But, what makes him learned?

I have read the report of the Committee of the Law Society recommending a reduction of the number of arts units from five to three; and, because the American legal profession has discussed this question as much as your profession is now discussing it, I am prompted to enter a discussion which is really none of my business. I hope you will pardon this lapse from courtesy.

Lack of unanimity concerning the status of arts units is as prevalent in the United States as it seems to be here; and the discussion proceeds on the same intellectual level. We also tend to ask ourselves questions about the non-professional education in terms of time and units — how may years should a law student be required to spend on arts units? Should economics or English be required? (The battle concerning Latin was lost by the pro-Latin group many years ago). But we have tended to increase our Arts requirements rather than decrease them.

The requirement imposed by law in the United States is, in the main, a temporal requirement — the law student must have a minimum of two years non-professional education in a University. As a result of a resolution of the American Bar Association in 1950, this requirement will be increased to three years after 1955. Neither the two or three-year minimum gives a true picture of the actual situation. Although we have had the two-year requirement since 1920, 51 per cent of our profession had a BA and an LLB degree in 1951. In New England, where our University tradition is the strongest, 73 per cent of the lawyers have a BA degree as well as an LLB. There is no appreciable difference in the percentage in cities under 200,000 from those over 200,000. All of the major university law school (Harvard, Yale, Chicago, Michigan, California, etc.) require a BA degree before professional subjects are undertaken, or before the LLB is received. I suppose that most members of the profession, even though they themselves did not have full liberal arts education, would recommend that their sons have such education before practising law.

Why does our legal profession propose to increase the non-professional requirements at the same time that some members of your profession propose a decrease? I must confess that some members of our profession favoured the increase in arts requirements as a means of discouraging admission to the Bar, which they thought over-crowded. While this may help the present practitioners, it hardly seems to be a proper basis upon which standards of education ought to be determined. I have also found this same argument

here in New Zealand, although in reverse form. I have the impression that one reason some of you favour decreasing the number of arts units is because you think the present requirements discourage an abundance of unqualified clerks.

The main arguments advanced in the United States for arts units for lawyers are: (1) A liberal education is essential for a learned profession, whether or not such education is of "practical" value to the practitioner; (2) Whatever its weakness or failures, a liberal education is the only safeguard to the public against a lawyer's breach of confidence, selfish advice or inadequate sense of moral values in his advice; (3) A liberal education is necessary for the competence of the practitioner.

The first position is maintained by the survivors of the battle concerning Latin as a required unit and the new supporters of a "classical" education, such as the followers of the former Chancellor of my University, Robert M Hutchins. The position of this group is best summed up by the statement of Dr Andrew Stewart, President of the University of Alberta, that that which distinguishes a good professional man from a mediocre one is the same quality as that which distinguishes a civilized man from a Philistine. A Philistine, said Dr Steward, is an ignorant narrow-minded person. By contrast, a civilized man has knowledge, understanding, and wise judgment.

If the first reason can be labelled as a reason based on "professional pride", the second reason advanced can be labelled as for the "protection of the public". The American Association of Law Schools has pointed out that lawyers deal with confidences and trusts which go the basis of our domestic, social and economic life; and they must, in this position of trust, make decisions and give advice where differing value judgments will produce differing advice. The only safeguard to the public is that the lawyer have as broad an understanding of human values and culture as possible. I do not have the statistics available, but I think a case could be made at home showing that those with the least University training get into more moral and legal difficulty in the profession.

The third argument is one that can be described as one to protect the public and one exhibiting pride in the profession. This argument assets that a lawyer is more competent if he had some general education beyond that of secondary school. As the New Zealand Council of Legal Education reported in 1934, everywhere in the English-speaking world a condition precedent to admission to practise is a preliminary general knowledge or cultural examination. Why is it considered practical for a lawyer to have an arts education? The American Association of Law Schools gives these as the objectives of pre-professional university education:

(a) Education for comprehension and expression of words.

(b) Education for critical understanding of Human Institutions and Values.

(c) Education for creative power in thinking.

Since language is the lawyer's working tool, objective (a) needs no comment other than to suggest that it may need something more than English, such as a course in logic or semantics. The third objective is also necessary in problem-solving and in sound judgment. Training in reasoning-power comes not only from such units as logic but from any unit in the University including the natural sciences in which the student is called upon to think out rational solutions by use of inductive and deductive reasoning.

But predicting the outcome of even routine litigation may involve considering whether a well-settled rule of law which is possibly applicable will be modified or reshaped to avoid unfairness and practical inconvenience. And, if the lawyer is advising on a transaction extending over a period of time in the future, what the client really wants is a prediction of what the law will be at the time a dispute is likely to come up for adjudication. How effectively and wisely the lawyer does either job of predicting depends on the insight which he has acquired about human institutions and values. The need for this insight is particularly true where the lawyer is called upon to advise on which of alternative courses of conduct, both legal, his client should undertake. Liberal arts education, although not the only means of acquiring this attribute, does seem to make man more conscious of the rights of others.

Furthermore, a good lawyer today is more than an adviser of clients on that which is narrowly legal; a good lawyer today serves as a legislator in his local or national government, as an administrator, as a member of a committee of the Law Society or some other organization seeking to obtain law reform. In this work also, the lawyer will be facing problems involving the relationship of law to economics, to sociology, to political science, and to ethics.

For a lawyer to do his job well in modern society it is not enough, as some of you have suggested, that the only non-professional work a lawyer needs is the study of the culture, history, and philosophy of law. This is, of course, needed; but it ought to be considered part of a lawyer's professional equipment. But, if a study of law's history shows anything, it shows how much law's development has been influenced by man's ethical, economic, and political beliefs of the times. A competent lawyer of the twentieth century must comprehend the twentieth century institutions.

Finally, I would like to suggest that a liberal arts education is desirable for a lawyer if for no other reason than that it permits the young would-be practitioner to speculate and think on the same problems that law deals with but from a different point of view. As Chief Justice Vanderbilt, of the New Jersey Supreme Court, a former President of the American Bar Association and a former Law-school Dean, has said:

> Law is nothing more than an official view of life, in contrast with the natural and social sciences which aim to mirror life's actualities, and with the humanities, philosophy and ethics which envision its ideals.

The law student cannot help but take a more mature approach to his law studies, if, before undertaking them, he has done intensive study for a substantial period on some human institution. The United States experience would confirm this. In examinations given by law societies, as well as in law examinations given by the University, the student with the B.A. degree has a better record than a student with two or less years of liberal arts work. I think the English experience must also bear this out.

But, regardless of the merit of the American arguments for increasing liberal arts education, I would doubt the wisdom of reducing the arts units to three, of which one must be English. I would fear that the result of this would be that the law student would get no intensive work in any subject, but would select three Stage I subjects in each of which he had probably done so well in high school that he was already on Stage I level. With five arts units, there is a chance at least that the student will elect to take some work through Stage II level; but this seems almost impossible with three arts units. Certainly first-year university students in the United States, especially if they were also starting work, would select in the university to continue those subjects which the student had done well in high school. It is only in the second year of university, or in Stage II, that a student begins to get intensive new training in a University.

I would have another reason, but this may only be a judgment based on appearances rather than actualities. From the University matriculation requirements, I have the impression that your high-school subjects are heavily weighted in favour of English, Science, and Foreign Language. The only high school subjects which could properly be called part of social science would be History and Geography. I have no suggestion that such preference is undesirable. But is it desirable that a member of a learned profession should be unacquainted with the literature and thought of political science, sociology, economics, philosophy and psychology? These are university subjects which appear nowhere in your high-school curriculum. Three arts units of which one must be English almost compels ignorance of the law student of these areas.

In short, I do not see how three Stage I units in any college of the University can produce a young man ready to become a mechanic in law; certain it is that it cannot produce a member of a learned profession.