

Legal Scholarship in the Liberal Arts

LAW IS UBIQUITOUS. It pervades much of our lives and helps people throughout the world articulate values and deal with conflict. Yet unlike in Europe and other parts of the world--where undergraduates regularly study law, and law departments and faculties are as common as departments of history or literature--legal education in America is generally thought of as postgraduate education, located primarily in law schools dedicated to professional training. In fact, today respected scholars can argue about the need to develop law as an academic discipline without making reference to anything done in the liberal arts.

That contrasts significantly with the past, when some universities made a place for the examination of law as a body of disciplined knowledge separate from law schools or other academic fields, and some of the most important scholarship on law traditionally was done by American scholars with academic appointments in the liberal arts.

As early as 1887, Yale University established a course of study "for those not intending to enter any active business or professional career, but who wish to acquire an enlarged acquaintance with our political and legal systems, and the rules by which they are governed." During the 1920s, the Johns Hopkins University created an Institute for the Study of Law devoted "to the nonprofessional study of law, in order that the function of law may be comprehended, its results evaluated, and its development kept more nearly in step with the complex developments of modern life." However, with the growth and institutionalization of law schools, universities retreated from those early, promising efforts.

Today only 60 colleges and universities allow their students to concentrate in something called "legal studies" or "law and society." A handful of those offer full-fledged majors; the rest are minors or certificate programs. Noticeably absent are the Ivy League universities and all but a few of the best liberal-arts colleges. Furthermore, no more than a few universities offer interdisciplinary Ph.D.'s in law.

That is unfortunate both for legal scholarship and for the liberal arts. For legal scholarship, it means that the work of understanding law is generally coupled with the lawyer's need to understand how to use it or with the policy maker's desire to reform it, impoverishing our ability to see the complex connections of law, culture, and society in all their variety and to connect theorizing about law with the humanities and social sciences.

In the liberal arts, the failure to more fully articulate and institutionalize legal scholarship deprives them of a subject of enormous richness and interest. Systematic study of law advances the goals of a liberal education because of the importance of law in culture and society, as well as the capacity of legal study to engage and enhance the intellectual, analytic, and imaginative capacities of undergraduates.

Indeed, the study of law invites examination of a wide range of critical questions about people and the ways they live together, raising issues traditionally linked to liberal inquiry. For example:

- Why are some societies dependent on law while others resist legal regulation and favor different modes of organizing, regulating, and changing behavior?
- How does law change, and how do social forces precipitate legal change? What role does legal continuity play in historical change and the structuring of historical time?
- Can immoral law nonetheless be valid and binding?
- How is the power of law exercised, and what role does law play in the calculus of sociopolitical legitimacy?
- What is the relationship between the official law and the lives of people that the law is supposed to regulate? Is legal regulation efficient? Does law facilitate or impede the growth of scientific knowledge and technological innovation?
- In what ways are the narrative styles used by legal officials distinctive, and in what ways do they resemble rhetorical modes in other domains of social life? How do the canons of argument and proof used in law compare with those used elsewhere--for example, in philosophy, science, or mathematics?
- How is the legal concept of authority grounded in a tradition of reading and re-reading canonical texts? How does this tradition of reading conserve and alter the meaning of written law?
- How should law be understood as a cultural system? How does it reflect or embody the debates and divisions of the cultures in which it is found? How have legal institutions embraced and constructed, as well as silenced and stigmatized, various national, social, cultural, and personal identities?

Legal study provides a useful and engaging way to sharpen students' skills as readers, as interpreters of culture, and as citizens schooled in what Aristotle would have regarded as a kind of practical wisdom, a knowledge that extends beyond theoretical understanding to civic and moral action.

To understand legal materials, students are required to develop habits of close reading and hone their interpretive, imaginative, and analytic abilities. Comprehending those materials requires great attentiveness, the ability to see how arguments are constructed, and the willingness to imagine alternative possibilities. Because law is concerned with resolving disputes, the student of law is invited to test his or her ethical arguments and textual understandings in a context where decisions must be made and force often must be deployed. In each of these respects, legal study complements the objectives of a liberal-arts education.

STILL, one might ask why study law in the liberal arts when there is a well-developed tradition of legal study in professional schools? Or, more simply put, why should a liberal-arts college do what some people believe is now done in law schools? The short answer is that if law schools did anything like what I am describing, it might be less necessary to study law in the liberal arts. But they do not.

It is true that the law school of the 21st century is a far more open and accommodating place than it has ever been. The boundaries between law schools and the rest of the university have been blurred so much that many faculty members at the best law schools now have Ph.D.'s in addition to law degrees. Yet that blurring has occurred at the margins of even the most interdisciplinary law schools. At the center law schools are still "lawyering schools."

While the education of lawyers is important in its own right, legal education emphasizes doctrine and teaching students to "think like lawyers." Law school has the same relationship to legal study in the liberal arts as medical school does to the study of biology or business school does to the study of economics. In law schools, legal study is treated as a subject for professionals and practitioners who must understand what the law says and how it can be used to serve the interests of clients. It emphasizes the use of law as a tool rather than its role in society or its ethical and rhetorical dimensions. Consequently, law schools largely ignore broad regions of legal knowledge.

Legal scholarship in the liberal arts is a form of resistance to the professionalization of legal learning and its almost exclusive location in law schools. There is an important difference between teaching law to students so that they can use it as a tool in their professional lives, and teaching undergraduates about law as a social institution and about what happens when law is learned the way lawyers learn it.

That is not to say that law schools never take on law in a broader, more intellectually capacious way. Many do. But a certain limiting vision and cramping of style comes with the territory marked out by professional education.

Meanwhile, law-related courses--like constitutional and international law, legal and constitutional history, and the philosophy of law--have long been found among the offerings of social-science and humanities departments, yet they tend to focus on only certain aspects of law. For example, while legal study enriches the study of politics, much of what constitutes law cannot be brought within the confines of a discipline devoted to political matters.

Thus, legal scholarship in the liberal arts should be more than just another interdisciplinary venture, although it certainly draws on a variety of disciplines. It should be a distinct discipline. Thinking about law on the other side of the boundary marked off by professional education means finding the place where moral philosophy, with its arguments about the right and the good; literary theory, with its evaluations of the meanings and uses of language; and political science, with its understanding of the nature of social organization and of the harsh face of power, come together. And it means claiming that place for legal scholarship itself.

Fortunately, more organizations are starting to promote legal study in the liberal arts. For example, the Consortium of Undergraduate Law and Justice Programs was established last year with the stated purpose of supporting and promoting undergraduate programs in law and justice studies.

But more should be done. Colleges and universities should hire faculty members who think of themselves primarily as legal scholars and develop autonomous programs, departments, and research centers where a new conception of legal scholarship can be developed, a conception that moves away from professional issues and disciplinary perspectives toward a new synthesis. That synthesis grounds legal scholarship in the central concerns of the liberal arts, namely the effort to foster a general understanding of culture, history, science, and social organization. Legal scholarship in the liberal arts highlights the moral and political dimensions of law rather than its technical force. It opens up a space in which the issues of what law is, and toward what ends it should be directed, can be contested and assessed--and in which law just might be saved from the lawyers.

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