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Law courses have exploded across school programmes in recent years. From one end of Canada to the other, thousands of students and hundreds of school teachers are now studying law. Just what they are learning is uncertain for, apart from a head count of those present in the classroom, there is little curricular enquiry and even less organisation. The effort appears to be an unled mass movement rather than a planned educational development. And its size is still growing.

The origins of this explosion of legal interest explain its unorganised character. The pressure for legal education has come from the students themselves. Why the youth of the seventies should assert such an interest in law has not been investigated. Neither lawyers nor educationists have stopped to fathom the reasons. Instead, school principals and teachers have rushed about to satisfy demand. Their reaction has reason if not forethought. In an ever increasingly optional programme of studies at school, the students themselves can determine more and more the fields of their learning. Good or bad as an educational principle, once elective and alternative programming is admitted into the school system, teachers have no option but to respond to demand. Their lot is not to reason why, but to provide the subject-matter or become redundant.

The bulk of new law courses are to be found at the high school level where students have the greatest freedom of course selection. Moreover, the classes are splashed all across the curricular spectrum. A fairly narrow and generally consistent law course has been offered in some schools throughout the country for a generation or so. It has been the exclusive prerogative of business educational specialists and has exhibited a strongly vocational

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1. *E.g.* Alberta, Dalhousie, Victoria and pre-eminently Windsor. There has been some notable work by a very few individual lawyers, *e.g.*, W. H. Jennings & Thomas G. Zuber, *Canadian Law* (2nd. ed. Toronto: McGraw-Hill Ryerson, 1972); Patrick Fitzgerald, *This Law of Ours* (Scarborough, Ont.: Prentice-Hall of Canada, 1977), both student textbooks but with very different approaches, and Martin L. Friedland, *Access to Law* (Toronto: Carswell/Methuen Pub. Co., 1974), a study for the Federal Law Reform Commission.

theme. Consequently, the only law taught was practical training in those parts deemed useful in commerce.

Now the mass of students, asking about law but knowing of it only through their experience on the streets have suggested many kinds of courses, some solidly academic, others variously practical, vague, narrowly specific, unbalanced, esoteric or frankly whimsical. The teachers, being largely untrained in, and therefore by degrees ignorant of, law, have reacted as fast as possible and conscientiously as best they can with what little assistance has been available to them. Not surprisingly, the eclectic selection of aims, content and methods by individual teachers has produced a most catholic and unplanned, not to say little thought out, range of courses.

But the fault is not theirs. Initiative and support for legal education and leadership in curricular thinking has not been provided, as it should have been, by the legal profession. Rather, the movement of student interest has almost passed lawyers by. Only in the last few years has the omission been recognized and serious work tentatively begun. The official effort merely consists, so far, in a commitment of faith by the Young Lawyers Section of the Canadian Bar Association to the ideal of legal education in the school system and an initial study of the legal sources and teacher training programmes already, if haphazardly, in place. In addition, some striving to improve those resources has just begun in a few Faculties of Law.[1] The fundamental questions still lie unasked, or at least visibly unanswered. The absence of written opinion on school law programmes in Canadian legal journals affirms this conclusion. It must be changed and curricular thinking begun.

It is probably too late to worry about the causes of the current pressure of student interest in law. In any case, lawyers will readily assume the inherent value in the education of children in their own discipline. They will hastily bypass the question, why teach law? But the reasons for the assumption are most important, for they alone will point the way to tackle the next and imminent problem, what law to teach? The intent of this article is to introduce the issues at the core of these two fundamental questions about the purpose and the form of school law programmes.

I. *Why Teach Law?*

Numerous reasons spring to mind to justify, not to say demand, the

teaching of law in schools. All tend to support one of two assertions, namely that the study of law is both a valuable educational tool and a practical necessity for daily life.

Central to the educational considerations is the perception that law is an ideal vehicle for teaching about values. The need for moral education is generally agreed but the means to achieve it, especially with the passing of compulsory religious studies, is uncomfortably unsettled. The study of law can fill this need readily. Indeed, it may provide a better opportunity for moral understanding than any other medium of instruction yet employed. The reason is that law need not carry any particular moral, religious or humanist message nor promote any one set of ideals for human behaviour.

For sure, the legal system reflects the society of its time and place and is, therefore, not value free. But though it may bear moral standards, its own structure is not intrinsically value laden. In short, law is not intended to be messianic.

At the same time, the relativeness of law to society throws upon it all the stresses and strains of the day, from the more general disputes of the political community to the most intimate problems of individual human lives. Consequently it reflects the full range of human enquiry about morals. First, law has to face all of the age old moral issues of life and death. Secondly, it exposes the human tensions in striving to resolve these issues, including the effort to find the means to do so. Lastly, law offers a slowly evolving set of solutions contained in the principles and decisions passed on from previous generations.

A short example may illustrate these comments. So simple a rule as the prohibition against murder imposes a very definite and fundamental choice about the value of life. Yet there is no certainty about what constitutes murder. For instance, how does euthanasia qualify? The very fact that the English language provides a separate word for mercy killing indicates that society takes a different view of such an act from outright slaughter, which the law may or may not take into account in its definition of murder. Should euthanasia be included as murder? Although the law may have been thought to answer this problem long ago, the continually changing circumstances of social life demand fresh reconsideration of old rules. In this example, recent instances of refusal of medical services and the extinction of life support systems are but new twists to an old problem. It is instructive to notice that law does not conclude what morally must be done, but at most what shall be done.

The fact that the law leaves questions about the human condition open to reconsideration shows that it predetermines neither the issues nor their solution. It merely carries forward, as a guide, the decisions of the past. These are precisely the virtues of law as a means of moral education. Through legal studies of concrete instances, students may be exposed to the critical questions of human life. They will experience the conflict of values, both at an individual and societal level, in answering those questions. They will discover the subtlety of moral choice and learn to decide for themselves about standards appropriate to particular situations.

Much can be gained by examining the conflict inherent in legal issues, but the ultimate goal of law is the resolution of difficulties. Law thus introduces students to the important social processes of decision-making. The legal system exhibits several models of decision-making machinery. Lawyers recognise such means as personal settlement by negotiation, impartial adjudication in courts and tribunals, democratic participation through votes and ballots and authoritarian regulation by government. Education in law may thus provide students with alternative examples of ways to resolve disputes and some experience in applying them.

Interwoven in the legal methods of achieving decisions are the distinctive thought processes that form the core of any discipline. Wrestling with legal issues develops certain mental skills and an invaluable technique for problem solving. The pressure of opposing opinion encourages logical analysis of problems and systematic reasoning in argument. These mental attributes may be second nature to a lawyer, but are unknown to the untutored. As wisdom begins with the ability to differentiate, so legal studies may help the cause of education. Moreover, law throws up the kind of issues that attract interest and attention. Students are motivated by its obvious relation to their own experiences of daily life. Thus legal study provides them with many occasions to practice the acquisition of mental skills.

But knowledge and reasoning, of legal or any other character, are of little value unless they can be communicated to others. Happily, discussion and debate of legal issues also hones the verbal skills, both written and oral, of self-expression and argument. Since the very earliest efforts at conscious training of novice lawyers, moot courts and mock trails have been successfully employed as excellent vehicles to develop verbal agility. Undoubtedly, high school students would equally benefit from similar experiences.

Last, but not least, there is intrinsic value in the study of law for its own sake. Because it permeates the whole social fabric, its students develop an awareness of their society at large. While law operates at moments at the most exalted level of state, at the same time it affects the most humdrum aspects of individual life. Thus law regulates at once the constitutional prerogatives of the Crown and the parking ticket of the delinquent driver, or the division of treaty powers for the state of Canada and the bus ticket of the individual Canadian. In fact, law is the major overt and organised means of regulating social life. Consequently, its study can provide students with insights into both our institutional structures and our cultural values. Valuable as this knowledge would be of itself for students, it will further help them to appreciate both their position as individuals in the Canadian society and the communal utility of law as a means of social control.

The practical reasons for legal education in schools arise from the character of law itself. Students are likely to regard law as a practical subject of importance. In that they are right, which is reason enough to teach it. Furthermore, the legal maxim that ignorance of the law is no defence challenges lawyers to propagate their subject and schools to teach it. If, for instance, sanctions of law are intended to have any deterrent effect, then people had better be made aware of the legal standards expected of them. Where better to begin than at school?

Moreover, in a participatory democracy, it is vital that students learn about their rights and duties as citizens. Knowledge of the institutions that control the society is a prerequisite to intelligent democratic action. Since it is the law that organises and supports these institutions, legal education is an obvious way for students to learn of them. In addition, it is important that students know not only their civic responsibilities, but also their freedom of action within the Canadian system of government. The measure of good citizenship is not inculcated conformity, but a healthy respect for the rights of others as well as one's own, and an allegiance to orderly processes, even in diversity. The character of law encourages such critical, yet constructive attitudes. Consequently, its study will develop them in students, the next generation of Canadian citizens.

Finally, personal contact between students and officials in the legal system will encourage the process of their socialization. Much of the public apprehension about law is based on fear of the

unknown, in this case a mixture of legal mystery and majesty. Meeting with lawyers, judges, policemen, probation officers, social workers and like officials in the informal circumstances of a law course will help students to dispel the sometimes awful, frequently impersonal, appearance of the legal system.

These personal contacts will also expose students to the possibility and variety of legal careers for themselves. Learning about law can only help them to make an informed decision about such a choice of career.

Opinions will differ about the primacy amongst these reasons for a law studies programme in our schools. No order of priority is intended by their enumeration here. But there cannot be much dispute over the legitimacy of each of these justifications, and, taken cumulatively, they present an overwhelmingly persuasive case for action. Suitable action is the subject of the second fundamental question.

II. *What Law Should Be Taught?*

Framing this question to obtain unanimity of interpretation is nearly as hard as answering it. There will be some who will immediately wonder which fields of law should be included and which omitted, for it is patent that not all laws can be studied by anyone. There will be others who will think a little more broadly about the kind of study of law that should be offered. A mix of substantive, procedural or even literary perspective on the subject will find expression. But such views, in concentrating on the content of the course, are exclusively internal to the subject matter of law.

The needs of the students being taught must also be considered. An external and outward looking approach ought to be entertained. Surely the primary enquiry should not be about course contents but into educational objectives. What effect should the study of law have upon our youth? What do we desire to achieve in and for our students by presenting them with programmes of legal studies? These are the kinds of questions on which to focus attention. Their answers ought to become the goals that guide all decisions about course contents, as well as teaching methods, student evaluation and much else besides.

Reviewing the problem of what law should be taught in this light foreshadows two consequences for its resolution. First, it immediately becomes obvious that the problem does not lie within

the exclusive expertise of the legal profession. The phrase "legal education" does not by accident mix two disciplines. Thus, as certainly as educationists may have blundered about in search of legal understanding without legal assistance, so lawyers will surely flounder in educational principles without complementary help. A novel dialogue between the two distinct disciplines that transcends the severe barriers caused by insular expertise and large bodies of precise jargon is a preliminary necessity to the fruitful conclusion of the problem. The remaining remarks about the general objectives of a school law programme are, then, a legal contribution to this new dialogue.

The second consequence of viewing the problem of what law to teach as an enquiry about educational objectives is that its solution is to be found in the justification for teaching law at all. In other words, the resolution of the second fundamental question about school law programmes relies upon the reasons in answer to the first one. Accordingly, the analysis of those reasons made previously in this article may now appear relevant and be helpful.

A summary response to the quest for the educational objectives of a school law programme might be that its aim is to enable students to respond sensibly to the impact of law on daily life. In other words, resolving the problem of what law to teach amounts to providing students with as much legal substance as is necessary for them to cope rationally with whatever experiences in their own lives may be affected by law. These observations on the second fundamental question amply reflect the educational and practical reasons supplied in answering the first enquiry and why teach law?. Responding to legal situations implies that students will expand their mental ability to decide and to behave with rational sense in such circumstances. This development will impart the educational benefits of legal study already discussed. The impact of law on daily life refers to the practical relationship between law and the Canadian society, to which everyone is party. Responding to this impact supposes that students will acquire a practical knowledge about when and how law may touch their lives.

Translating this deceptively simple and general aim for a school law programme into specific objectives and then into substantive practice is no mean task either for the legal commentator or the practising teacher. This introductory article will not attempt to elaborate detailed legal curricula and methodologies. But some further remarks may usefully be made about the relation of aim to

achievement in a school law programme as a concluding contribution to the problem of what law should be taught.

Previous comments on the connection between the reasons for teaching law in Canadian schools and the educational objectives of such efforts implicitly refer to two different kinds of intellectual growth that may be expected of students. More may be said about their character, importance and relative balance in constructing the actual programme of students' legal studies.

One kind of intended intellectual acquisition is knowledge of law and its functions in society. Law's character as an instrument of social order demands that it be studied by students in the social context of its existence and operation. The discipline of law certainly cannot be understood from a treatment of its rules divorced from reality. However, this laudable intention creates a difficulty for course structure. The social context of the legal system is so varied, there is a danger that the imposition of educational structure will be arbitrary. Risking this danger, lawyers at least may agree that there are several distinct strains of legal relations which accordingly must be granted pride of place amongst cognitive objectives for a school law programme.

Law is concerned as much with governmental institutions as with private rights and as greatly with their maintenance as with orderly processes for their change. Hence, to develop students' knowledge about law, it is important for them to learn how the legal system both supports social life and social institutions and regulates personal relations. Their studies would be incomplete if they did not also emphasize how the law balances these public and private interests and how it is reformed as society changes.

The other intended intellectual expansion is the acquisition of skills and attitudes. Those appropriate to the study of law are found in the lawyer's conception of the legal process. Students need to understand, and eventually to participate in, this process of law. Hence the school law programme should consciously try to develop their appreciation of the capacity of law for use as a problem solving tool, and their ability to take advantage of its resources.

Whatever may be said as to educational intent, in practice whether emphasis is placed on the acquisition of substantive knowledge of law or of legal skills and attitudes will depend largely on the character of the particular class of students and the focus of the individual teacher. However, lawyers will readily understand that the presence of both elements in a deliberately preconceived

balance is essential for a true appreciation of law. Contrary to common lay opinion, the law cannot accurately be described as a mass of rules to be learned by heart and applied by force. Law involves the working out of socially acceptable and morally laden principles through recognized processes. Rules of law are certainly an integral aspect of the legal system, but they are only a part of the means to its end, namely the orderly regulation of daily life.

To lawyers, the mixture of substance and process in law constantly presents itself in their practice. The danger is that schoolteachers, being alert only to the law in books, will unwittingly instruct students in the rules of law alone. They may be unthinkingly unaware of the existence, not to say necessity, of law's procedural, as well as substantive, character. Truly, without substantive principles, there would be no legal standards of human conduct, rational or otherwise. Yet equally, without law's processes, there would be no way of establishing socially acceptable legal principles, no way of applying them, and no way of reforming them to suit the changing times. Hence, to overemphasize principles and rules in the school law programme would be a disservice to both the students and the discipline of law.

How effectively students acquire the skills and attitudes needed to comprehend the legal process will determine how sophisticated they become at responding to circumstances involving the law. They are not to be expected to become learned counsel, nor even their own self-counsel. Their studies will have more of the character of a course about law than a training in law. It is to be hoped that most students will become wise to law and sensibly responsive to the legal system that surrounds their lives.