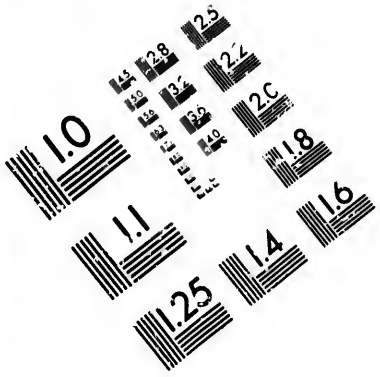


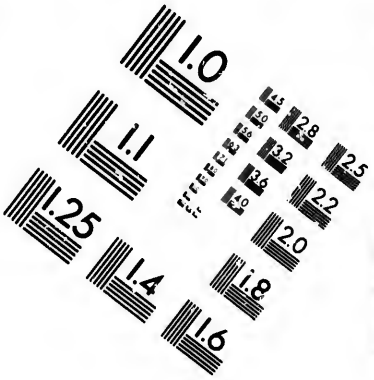


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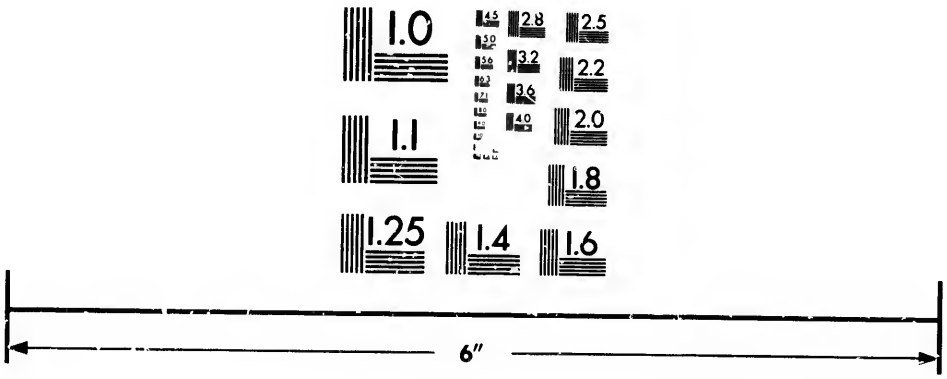


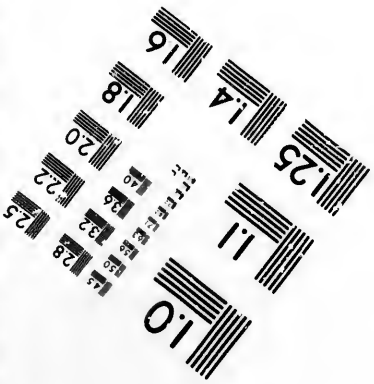


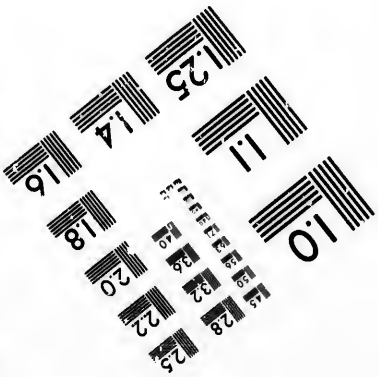


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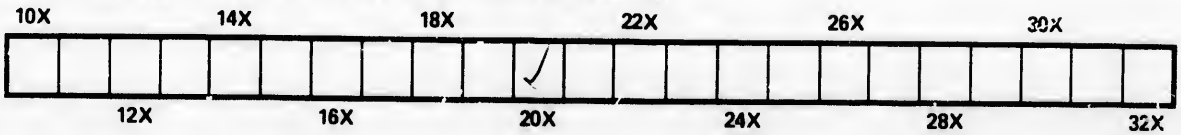

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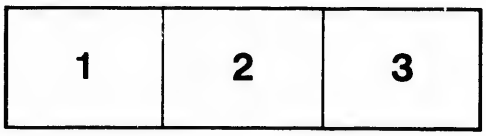


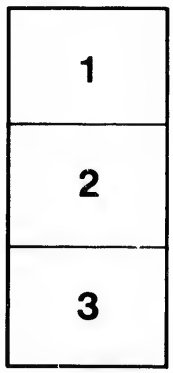


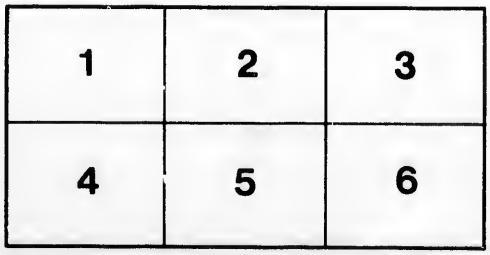

ANNUAL UNIVERSITY LECTURE

# "THE WORK OF A FACULTY OF LAW IN A UNIVERSITY"



BY

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# "THE WORK OF A FACULTY OF LAW IN A UNIVERSITY."

*Mr. Chairman, Mr. Principal, Members of Convocation, Ladies and Gentlemen:*

When I was informed that I was to have the honor of delivering this year the University lecture, it seemed to me that it was an opportunity not to be lost, of explaining, in general terms, what I regard as the proper work of a University Faculty of Law. I have taken this, therefore, as my subject, though I am conscious that it is one upon which, perhaps, there is nothing very new to be said, unless indeed one is to purchase novelty at the expense of truth.

The Law Faculty of McGill looks back upon a past, of which it is justly proud. It includes among its graduates many men who have won for themselves distinguished positions at the Bar or on the Bench, and if you will allow me as a comparative stranger to say so, it seems to me to say much for the loyalty and affection of its graduates that eminent judges and lawyers should be so ready to sacrifice the scanty leisure of a busy life, in order to help their younger brethren to prepare themselves for professional life. I do not need to dwell here upon the noble and enlightened generosity of Mr. McDonald, but for whom I am afraid the Law Faculty would have a hard struggle for existence. Mr. McDonald has monuments scattered about the *campus* more conspicuous than the rooms occupied by the Law Faculty. But it is unnecessary to remind anyone here that he has been our greatest—almost our sole—benefactor, nor that only a week ago we received from him a further instance of his munificence, for which we beg to tender our grateful acknowledgment.

But if the past of our Faculty is not inglorious, we hope that a still greater future awaits it.

And it is not unprofitable from time to time to consider afresh what are the objects which we seek, and how far experience and observation might suggest any change in our methods.

Such a review, if it does nothing else, may at least have the advantage of enabling us to realize more distinctly the limits of the possible. And in the first place, I would begin with the frank admission that, in my opinion, it is impossible that a Faculty of Law should produce a fully equipped lawyer. This requires practice and experience of affairs, as well as theory. And indeed the theory itself, which can be given in courses of lectures, gradually acquires a fuller and richer meaning in the mind of the student, as he sees it bit by bit illustrated and analysed in his subsequent practice. Whether this is the case in other professional Faculties I do not presume to say, The first essays of the young doctor, unlike those of the young lawyer, are performed before no earthly judge. If we admit, then, that we cannot take a student at eighteen years old and turn him out at twenty-one an accomplished lawyer, the question remains, what can we reasonably expect to do for him? To this I think we may reply generally: We can impress upon the mind of the student the fundamental principles of law. We can accustom him to accurate reasoning upon these principles, and the consequences which flow from them. We can illustrate them by comparison, and by analogies taken from our own or other systems of law. Finally, we can trace for him the historical development of existing legal institutions. Here, at McGill, in the course of three sessions, all the important topics of the Civil and Criminal codes and of the Code of Procedure are dealt with. Our programme also includes Roman Law, Legal History and Constitutional Law. There is an old maxim of very doubtful soundness to the effect that it is the part of a good judge to extend his jurisdiction. It applies, no doubt, *mutatis mutandis* to a professor. And as a professor of Roman Law, I might perhaps be pardoned if I attempted on this occasion to magnify the importance of that subject. But I feel that here any such attempt would be merely tilting against windmills. A knowledge of the Roman Law may in England, or in the United States, be something of a luxury. Here, at any rate, it is a necessity. The lawyers who are the most successful in practice are the first to admit the importance of a sound knowledge of the Roman Law. Even in the United States, where things are soon brought to the touchstone of practical results, the best lawyers recommend the study of the Roman law. Chancellor Kent said: "The Civil Law is taught and obeyed not only in France, Spain, Germany, Holland and Scotland, but in the islands of the Indian Ocean, and on the banks of the Mississippi and the St. Lawrence. So true, it seems, are the words of D'Aguesseau that the grand destinies of Rome are

not yet accomplished. She reigns throughout the world by her reason, after having ceased to reign by her authority." Chancellor Kent might have added to his catalogue, the Cape of Good Hope, and British Guiana, where the Roman-Dutch Law prevails.

Pothier devoted more than twelve years of his wonderfully laborious life to his re-arrangement of Justinian's Pandects. The preface to that great work, though it appears under Pothier's name, was written by his friend and collaborateur, M. de Guienne. It contains an admirable vindication of the study of the Roman Law, as forming a necessary part of a French lawyer's education. The writer points out that little of value would be left of the Droit Civil, if we were to take away that which it has borrowed from the Roman system. And he goes on to say, that it is impossible properly to understand the rules of the French Law, without considering the source from which they are derived, and the manner in which they have been gradually developed. His logical and masterly statement is expressed in that fluent if not always strictly classical Latin, which was becoming a rare accomplishment in the middle of the 18th century. Pothier himself must have been among the last of the great lawyers, who not only wrote Latin gracefully and easily, but was able to converse in that language. His friend, Le Trosne, tells us that he accompanied Pothier on a journey to Rouen and Havre, which was almost the only occasion on which Pothier was induced to tear himself from his books. The two friends conversed in Latin nearly all the time. No doubt, the comparative neglect of the Roman Law in the present day is in part due to the loss of any such familiarity with the language in which it is written.

There is one subject that forms part of the legal programme in many Universities, which is not covered in the outline I have just given. I refer to Natural Law, or *Naturrecht*, for the true home of this study is in Germany, and it has never led more than a somewhat sickly and precarious existence in other countries. It is possible, no doubt, to present in an interesting way, philosophical or metaphysical considerations as to the ultimate basis of law. I feel almost a sense of ingratitude in speaking with any disrespect of this subject, when I remember the stimulating and ingenious prelections of the late Professor Lorimer, of Edinburgh, which I had the advantage of hearing. But as one may see things very plainly without understanding thoroughly the nature of sensation or perception, so one may be a very good lawyer, without having

dived very deep into the philosophy of the ultimate basis of law. Natural law, as generally presented, deals with principles so lofty, and formulates rules so abstract, that it might perhaps be called "stellar jurisprudence," for, if I may profane a fine line of Wordsworth, its object appears to be "to preserve the stars from wrong." There are indeed some charming works on this subject. Perhaps, the most delightful is Culverwel's "Elegant and Learned Discourse of the Light of Nature," a book too little known. But to call them law books is an abuse of language, and I am afraid the very limited time at our disposal, makes it impossible to give a place to Natural Law in our curriculum. There is one other subject, for which at present no provision is made, which I think it would be desirable to introduce. This is Medical Jurisprudence or Legal Medicine. This subject is included in most University Faculties of Law, and it has always seemed to me to be of considerable utility. The lawyer, of course, cannot be expected to make a scientific examination of a blood stain, to detect the traces of poison, or to judge whether a child was viable. But about these and other kindred matters, it is an advantage to him to have received a little elementary instruction. If it does no more, it at least familiarizes him with some of the ordinary terms, which he is likely to hear afterwards in the mouths of medical experts, and it enlarges his horizon, by giving him a glimpse into a branch of science so remote from his own.

Having said so much shortly, as to the subjects with which our Faculty has to deal, and having so far described what it is or ought to be, I will adopt an old method, and say what we do not intend it to be.

I am sure I speak for my colleagues as for myself, when I say that we do not intend our Faculty to be a mere coaching establishment to prepare students for the Bar examination. Of all the shallow and short-sighted views of education, there is surely none more shallow and more contemptible than that which lies in thinking that nothing is worth learning which cannot be put to immediate practical account.

The student whose main anxiety is not to learn anything, which, as he would express it, will not "pay," is a deplorable spectacle. I do not think at McGill we have many such, but we want to exterminate the species. In our Faculty we want to fill our students with generous enthusiasm for learning, with respect for knowledge patiently, painfully won, with large and liberal views of life and its purposes, with the consciousness that they are preparing themselves

for a noble profession. We want to inspire them with a desire to play a worthy and strenuous part in the community, to add them to the number of those

> "Whom a thirst,
> Ardent, unquenchable fires,
> Not with the crowd to be spent,
> Not without aim to go round,
> In an eddy of purposeless dust,
> Effort unmeaning and vain."

But certainly, law is in an especial degree a profession, in which the most varied knowledge may be demanded at short notice. It is impossible to be sure beforehand what will or will not "pay." A busy lawyer may be occupied one day with a question involving antiquarian knowledge of ancient customs. For the next, he may have to understand the intricacies of a new machine. The third day he may be confronted with a knotty point in the constitution of the Empire.

I am not proposing to annex the Faculty of Applied Science. We shall not have a course of mechanics in the Law Faculty. But we may do a little to give the student the scientific spirit and the pliability of mind, which will help him to cope with the difficulties which we hope await him. Nothing is so distinctive, I venture to think, of the truly scientific man, in whatever department, as the faculty of seeing, in every particular case, an exemplification of some general rule, and conversely of rapidly deducing from a general proposition, the particular consequences which it involves.

It is precisely this faculty which it is the special function of scientific education to develop. It is astonishing sometimes to see the facility with which these operations are safely performed by men, whose minds, originally strong, have been thoroughly trained to avoid the fallacies into which the natural man—the "*intellectus sibi permissus*," as Bacon expresses it—is apt to fall. They appear to arrive at their results less by a conscious process of induction and deduction, than by being able to clothe the particular in the universal, and to break up the universal into the particulars which compose it, by a single effort of thought.

If anyone doubts that this is the merit of a really great lawyer, let him read the judgments of such men as Lord Mansfield or Sir George Jessel.

And it is only the inexperienced who imagine that in the practice of the pleader glibness of tongue and readiness of repartee, can ever make up for patient study of the facts of the case, and sound com-

prehension of the principles of law to be applied to them. It is true the client is apt to mistake intellectual fireworks for well-directed artillery. But the judge is less easily deceived. The instinct of the old advocate awakes in him, and makes him all attention to hear the carefully prepared argument of the sound lawyer. The showy rhetoric of the charlatan only lulls him into that slumber, which it is one of the chief arts of the Bench to conceal. And even the brain of the client is sometimes cleared with his pockets, by the payment of costs.

From my own observation of 11 years in the courts, I am entirely convinced that the men who rise to the top of the profession are, with few exceptions, the men whose early education has been the widest and the deepest. The habit of study is seldom obtained in mature life. The young man who has acquired this habit, and together with it, the instinct of the scholar, to take as little as possible at second hand, but to explore for himself the sources from which a principle flows, is far more likely to become a good lawyer than if he had spent the same time in learning the Codes and the Statutes by heart. The maxim "*melius est petere fontes quam sectari rivulos*" is one which every student should adopt as a guiding rule of practice.

If our Faculty is to be worthy of its name, its teachers and students alike must have clear ideas as to the ends and aims of education. And education does not consist in pouring into the torpid minds of students a mass of information, which they are to pour out again at the next examination. It consists, to use the noble image of Plato, in turning "the eye of the soul" to the light. I ask you to look back upon your own experience of school and university. How much of what you then laboriously learned have you not afterwards cheerfully forgotten? Of the volumes of notes which you so painfully compiled how much has become part of the permanent furniture of your minds? The real and solid gain which you derived from that period, was it not the intellectual stimulus, the brightening and vivifying of the mind, the love of good books, the sense of the dignity and sweetness of a life, the main purpose of which is in the harmonious development of the whole man? It seems to me there never was a time when there was greater danger of forgetting that a man is not educated, merely by reason of living in an age of mechanical invention, and that education itself is not a set of tools which we place in the hands of young men, to enable them to carve out commercial success.

Why should we, who have not, I suppose, any of us, invented anything in particular, go about in a state of fatuous self-gratulation, because a few men of genius have facilitated the means of locomotion or communication? The fact that I can speak to Boston through a telephone, does not make me one whit better or cleverer than my grandfather, who spoke through a sailing ship The day seems to be approaching when we shall be whisked about the planet with the velocity of torpedoes. But that will be small consolation if it finds us not worth whisking anywhere except into everlasting obscurity.

I quite admit that a student is the better for some contact with the world. Practical pursuits are a valuable training for study. Some practical experience is necessary for the proper appreciation of books.

It may be argued that no such general educative effects can be anticipated from the teaching of a subject like law. But with this I can by no means agree. Law is not so abstract as mathematics, and yet, a man who has learned to be a good mathematician has not only acquired in the process a certain amount of precise knowledge; he has become a stronger, a more capable, a better man. It is the business of every Faculty to make its teaching a vehicle of education in the highest sense of that much-abused word. To learn a law-book by heart is almost as profitless as to commit to memory a table of logarithms. The business of any Faculty is far less to impart a number of facts, than to cultivate and develop in the student certain qualities and habits of mind. It is possible in teaching law to explain the general principles, which, after all, are not very numerous, in such a way that an intelligent student will never forget them. But even within the Codes and still more in the Statutes, there is a mass of law with which, in my judgment, it does not fall to the Faculty to deal, except in a very general way. No lawyer in practice dreams of charging his memory with the minute details of the Merchant Shipping Act, or the Municipal Code, to take these merely as examples. He understands their outlines and he knows where to look for the answer to a particular question when it presents itself. To teach minutiæ of this kind to students is labor lost and deservedly lost. Moreover, the view that a lawyer is a person who possesses a certain amount of accurate information upon the law, and can supply from memory an answer to any question which is put to him, is inadequate, and indeed to a considerable extent fallacious. For the answer which is required is frequently not to be found in the books at

all. If the law is clearly stated in the Code there is no need of a judge to make it clearer. *Cadit quaestio.* It is where there is ambiguity, where two articles appear to conflict, or where the case which emerges has not been thought of by the Legislature that the services of a lawyer are required. The question cannot be solved by reference to the Codes, for the answer is not to be found there. It can only be solved by understanding the principles which underlie the legal system. To attain to a mastery of these is possible only for the few, and is the work of a lifetime. But a university course may do something to put the student on the right rails. I fancy I hear someone object. "Surely a law curriculum may include more than instruction in general principles." But I appeal with confidence to every lawyer of ten years' experience to say if any knowledge is so valuable, or is so difficult to acquire in the "rough and tumble" of practice. If the student has once acquired this elementary frame-work, he will be able in after-life to refer every particular consequence to its proper place. That which was at first abstract will become more and more concrete, as he sees continually the general rule illustrated by particular cases, arising in the infinite diversity of circumstances On the other hand, the young lawyer who has never firmly grasped the leading principles, is like a mariner without a compass. His experience is comparatively unprofitable for the want of any means of co-ordinating the facts which he observes. It is precisely this knowledge of general rules, which is seldom picked up in a haphazard way in practice. All of us who have spent a few years at the bar, have come across men who never to the end of their lives acquired this kind of knowledge at all. It happens occasionally that a man of this kind makes a tolerable shift to get along without law, by dint of common sense and force of character. But it is possible, and indeed not rare, to possess neither law nor common sense, in which case the chances are not favorable. And those students whose common sense is the strongest, will be likely to gain the most by a knowledge of principles, which, after all, are mainly based on the accumulated experience of the community viewed in the cold light of reason. A Law Faculty, then, as I take it, has for its main purpose to give the student the framework which professional experience will afterwards fill up.

Legal principles, however, unlike those of an abstract science, can seldom be thoroughly grasped, until we know how they came to be formulated in their present shape.

In no country can the law as it stands ever be fully understood without some knowledge of its historical development. As a French writer said of the Code Napoléon, "Les Codes des peuples *se font* avec le temps, mais à proprement parler on ne les fait pas." Everywhere the past illumines the present. This is especially true where, as in this Province of Quebec, the law itself is derived from sources widely remote from each other. The main body of the law is, no doubt, French, but important branches of it are wholly or partly English, and one needs only to examine a few *factums* to see how necessary it is for the lawyer to be able to make use of both French and English authorities. And, moreover, the English-speaking lawyer seems to me—though upon such a subject I speak with the greatest diffidence—to be under a considerable disadvantage in learning the French law from an English translation. Legal terms, "terms of art," handed down from generation to generation, acquire a kind of crust of associations. To translate a term of French law by an English word which is not a term of art is to strip it of half its meaning. Such expressions as an "opposition," "returns," "constitution of rent," do not convey half the meaning of "opposition," "rapports," "une rente constituée." The phrase "en bon père de famille" seems strangely disguised in the dress of "as a prudent administrator." Such examples might be easily multiplied. I merely mention them because it seems to me that our English students would gain a great deal by having their attention constantly directed to the original phraseology.

This is more, however, than a mere matter of words. In commencing my own studies of the French law proper I am very conscious that I must learn in a measure to create the atmosphere in which the French student has grown up. The fundamental institutions of the Common law are deeply rooted in the manners and customs of the people. To one who has been familiar with them from childhood they have a reality and vividness, which they do not possess in a law book. I cannot help suspecting that our English-speaking students are at some disadvantage, from the feeling that the French law is to them a foreign system. That this may be got over, the examples of many successful lawyers and honored judges sufficiently prove. But I am sure, those who, like myself, are conscious of this intellectual "aloofness" to begin with, should seriously set themselves to overcome it by familiarizing themselves with the historical development of the French law. And here I should like, with your permission, to venture for a moment upon

ground where I know it is incumbent to walk very warily. But it does seem to me, that, in our differences of race and religion here in Montreal, the law lecture rooms might fairly be treated as neutral territory. I cannot see why, in treating of law in a scientific way, a word need be said which can wound the most tender susceptibilities. And it is surely an advantage that law students of both races should have an opportunity of getting to know one another, and of forming friendships with one another, those durable friendships of youth, which are the best possessions given us by the gods. Our Faculty has always maintained, and I am sure will continue to maintain, the most cordial relations with the Faculty of Laval, with which it enters into friendly rivalry.

I hope that my rough statement of the aims of a Law Faculty will incline you to think that they form a proper part of the work of a university. This is not always admitted.

There are on both sides of the Atlantic some lawyers who hold the opinion that the teaching of law does not properly fall within the province of the university. Let the university make it her business to unroll before her students the golden pages of the poets, the historians and the philosophers of the ancient world. Let it be hers to enable them to track those bloodless phantoms, x and y, through mazes all but inextricable. Let the professor of architecture build for them his castles in the air, his cloud-capped towers and gorgeous palaces and solemn temples. The dark places of mind may be explored for them by the professor of mental philosophy, those of matter by the professor of mining.

In the Faculty of Applied Science, nature is to be taken with desperate machines by the throat and tortured until she gives up her secrets.

In the Faculty of Medicine every appliance that ingenuity can invent and money can purchase is to be placed at the disposal of an army of specialists.

Air, earth and sea are to be ransacked to procure obscure birds, insects, beasts, reptiles and fishes, which may illustrate the action and re-action of structure and function and throw light upon the history of animal life, in ages when the problems of existence were simple and solved by rude methods.

I have only glanced at a few of the many sided activities of a great modern university such as this. That of all the sciences, law alone ought to stand naked and shivering outside her gates, seems a hard saying. But to attempt to divorce the study of law from the univer-

ity is surely the blackest ingratitude. No science has owed so much to the universities. It was in a university that the first great revival of legal studies arose. Most of the best writers on law have been university professors. The universities alone kept alive the sacred fire through many a cloudy and dark day.

Let me justify in a few words these generalities. The great fabric of the Roman law was completed at a time when the empire, of which it is the most enduring monument, was already tottering to its fall. Most of the West had fallen to the Frank, the Burgundian, and the Vandal. Nothern Italy had been lost and again recovered. But it was overrun by the Lombards only three years after Justinian's death. In the horror of black darkness which settled down over Europe from the 6th to the 11th century, it seemed as if the Justinianian compilations, and with them all scientific study of law, had perished. I am aware that Dr. Maitland has said that when people speak of the Dark Ages they mean the ages that are dark to them. In spite of the taunt a lawyer must confess that for him the darkness of the period is sufficiently palpable.

Not that it was equally profound in all places, and at all times during these long ages. Here and there, a flickering ray from some religious house or monastic school shoots up into the night. And in Northern Italy, especially in the cities of Lombardy, the conditions of classical art and culture never utterly died away. Speaking of Italy, Ozanam finely says that the dark age was but "une des ces nuits lumineuses où les dernières clartés du soir se prolongent jusqu'aux premières blancheurs du matin." But the learning which lingered here and there was not legal learning.

Fitting has indeed made a desperate attempt to show that the books of Justinian were studied at Rome and Ravenna, and even at Orléans. With the zeal of a partisan he has claimed that there is sufficient evidence for the existence, during this period, of genuine schools of jurisprudence in these places. There seems to be ground for believing that some rude and unintelligent copies of the Institutes and of part of the Code date from somewhere about the tenth century. But the superstructure which Fitting has erected on such slight foundations has, I think, been finally shattered by the powerful attack of Professor Flach, of Paris. Even Fitting hardly ventured to assert that any intelligent use was made of the Digest before the revival at Bologna, to which I shall presently refer. And the Roman law without the Digest is much like the play of Hamlet without the Prince of Denmark.

Between the 6th and the 11th century all the instruction given in law was merely as part of the study of grammar. Boys of twelve years old, children, as Flach indignantly calls them, learned the meaning of a few legal terms, as explained generally by wildly erroneous etymologies, before they were considered old enough to approach the study of rhetoric. They were taught that "crimen" is derived from carendo, apparently because we have to go without a thing which a thief takes from us, that "lapis" comes from lædens pedem, because it is painful to kick a stone, that "argumentum" is equivalent to argute inventum. Such information you will admit was equally worthless, whether it was called grammar or law. At Bologna, and probably in other of the mediæval schools teaching of a slightly more advanced kind came to be given under the name of *Dictamen*. The lecturer in *Dictamen* taught composition in verse and prose. His prose course comprised the rules for private letter-writing, an early form of the books called "Polite Letter Writers," which may still be seen in the windows of little shops in country villages all over Europe. As supplementary to his course on letter-writing, he gave a set of rules for drawing up legal documents. The city statutes of Bologna directed that candidates for the profession of a tabellio or notary were to be examined as to their capacity *latinare et dictare*. Now I think you will agree with me that legal science had sunk to a parlous state when it was regarded as an adjunct to grammar, or as a minor branch of the art of letter-writing.

That remarkable awakening of the human spirit, which has been not inaptly called the Twelfth Century Renaissance, resulted in the rise of the Scholastic philosophy, the first modern school of philosophy, at Paris, in the rise of the first modern school of medicine at Salerno, and in the rise of the first modern school of law at Bologna. Savigny has examined the history of this last with profound learning, and the results luminously stated by him have been in all essentials borne out by subsequent investigations. They are brilliantly narrated by Mr. Rashdall in his work on the Universities of Europe in the Middle Ages. It is a fascinating subject, but I can only glance at it. At Bologna in the 12th century there grew up a school of lawyers so able and so enthusiastic that crowds of students began to flock to them from every country in Europe. The books of Justinian were dragged from their obscurity, and an army of scholars began to expound them and comment upon them. From being a minor branch of general education law became the most

important of all the faculties. Mr. Rashdall says, and there seems no reason to think the statement is exaggerated, "the great work of the universities, in Southern Europe at least, was the training of educated lawyers. The influence of Bologna and of the universities generally meant the influence of the lawyer-class upon social and political life." It is difficult for us to place a fair value on the work of these mediæval commentators. The explanations are generally thrown into the form of short dialogues, between an imaginary student and the Emperor Justinian himself. Very often we do not know which is more striking, the puerility of the question or the perverse ingenuity of the answer, which obscures what was before perfectly simple. E. g. on the subject of persons whom it is not lawful to marry, because they are connected with us by ties of affinity, the pupil says, "But seeing that a wife is connected with her husband by affinity why is marriage lawful at all?" To which the answer—and it is from the pen of the great master Accursius—is "A wife is not a connection by affinity, but she is the cause of affinity, even as unity is not number but is the beginning of number."

Justinian says he has divided the Institutes, which contain the first elements of law, into four books. There seems nothing very occult in this, but the gloss plunges us into a limbo of mediæval metaphysics, or perhaps it is physics. "Just as all the physical bodies are composed," says the glossator "of four elements, earth, water, fire and air, so that the whole world is governed by the forces of these four elements, so this book comprehends all law." And he gives us into the bargain the information that the earth is cold and dry, water is cold and wet, fire is hot and dry, air is hot and wet. Earth has the nature of melancholy, water of phlegm, fire corresponds to anger, blood to air.

In the gloss on one of the last titles of the Institutes we find the scholar pettishly saying, "Master, we have heard so much that we are weary, and you have become tedious to us. For heaven's sake tell us what more you intend to say." Justinian with commendable good temper continues the tranquil course of his exposition.

But in spite of their mediæval dress the notes of the learned doctors of Bologna are still full of instruction. And far more valuable than the positive results of their teaching itself, was the enormous influence which it gave to the study of law. The Roman law acquired in their day an ascendency which it never afterwards lost. But for their labors in directing the minds of the students of that generation

in these long forgotten treasures, it is exceedingly probable that the law of Montreal to-day would have been an entirely different thing. It was on the foundations laid by them that the lawyers of France, of Germany, of Italy, of Spain, of Holland, and of Scotland built the modern civil law. No doubt, the legal lore of the Middle Age degenerated into a mass of dreary pedantry, copied from one book into another, until it came, as Mephistopheles wittily says in Faust, to be handed down like a hereditary disease.

Es erben sich Gesetz und Rechte
Wie eine ewige Krankheit fort.

But the second great revival of legal study had its origin like the first in a university. The first breath of the modern spirit which blew on these dry bones of mediæval law and made them live was in the little University of Bourges, where two professors, Cujas and Doneau, began a long line of distinguished French Jurists.

I have said enough, however, to support my statement that modern jurisprudence may be said to have been cradled in the universities. How much it has since owed to the writings of university teachers it would take too long to tell.

Cujas, the greatest legal writer of the 16th century, was, as I have just said, a professor at Bourges. His nine folios, packed with learning, have been a mine of material for all generations of lawyers since his time. Vinnius and J. Voet, in the 17th and early 18th centuries, added lustre to the University of Leyden. Pothier was 22 years a professor at Orléans, and in his modesty said that his works were written only for his students. The substance of Blackstone's famous commentaries was delivered by him as professional lectures at Oxford in 1758 and several years following.

His literary activity was exactly contemporaneous with that of Pothier. Each of these great men rendered to the law of his country a service of incalculable value. The famous series of books by Mr. Justice Story, among the best legal works which America has produced, consist of his professorial lectures at Harvard. Among other writers who occupied professorial chairs, I can only mention Toullier, who was a professor at Rennes; Demolombe, at Caen; Laurent, at Ghent. Among the modern Germans, Savigny, a professor at Berlin, Puchta, and Windscheid at Leipzig, Mommsen, at Breslau. The last of the great French commentaries—that now appearing under the name of M. Baudry-Lacantinerie—is by nine university professors. Among living English writers who hold university chairs the names of Sir Willam Anson, Sir Frederick Pollock, Mr. Holland, Mr. Dicey and Mr. Maitland, are equally well known on both sides of the Atlantic.

In Scotland all the fathers of the Science taught at some time or other in the universities. Lord Stair, Erskine, George Joseph Bell. Among the living every Scotch lawyer will gratefully acknowledge the service rendered to legal study by the works of Mr. Mackay, Mr. Dove Wilson, Mr. Rankine and Mr. Goudy. In fact in law as in every other science there is a vast amount of valuable work, which can only be done by men who have leisure to follow the quiet paths of learning. Law Faculties need not fear to be known by their fruits, if we may call a law-book a fruit. And if one considers the work of universities in general, it is a very open question whether the actual teaching given within their walls has formed the most valuable part of it. It would surely have been a misfortune, if such men of our own day as Lord Kelvin and Lord Lister, had given up to their students what was meant for mankind. Men who are engaged in the active practice of any profession have not the leisure to produce a work *de longue haleine*. The comparative infertility in this respect of some of the universities seems to me to be attributable in no small degree to overlooking this side of university life. The too anxious attempt to exploit the professor's energies have rendered him possibly more useful to his students, though this even may be doubtful, but certainly less useful to the world.

I hope you will not misunderstand me. I do not mean to suggest that we, who in a modest way try to teach law at McGill to-day are all mute inglorious Pothiers or Blackstones, and that if we could escape from the burden of giving our lectures, we should break out into deathless dissertations on emphyteusis or hypothecs. But I do venture to say that the work of academic lawyers in the past has done not a little to keep alive the scientific treatment of legal questions, and that the profession owes to the universities a debt somewhat larger than it is always disposed to admit.

Perhaps the most striking proof of the utility of law schools in the present day is to be seen in the United States. Our neighbors of the great Republic are nothing if not practical. In no country has an institution which has ceased to be of actual service, so little chance of surviving by the force of tradition. And in no country are there at this moment so many flourishing and well-equipped Faculties of Law. I have been turning over the annual announcements of a large number of them, and cannot help being impressed, not only by the liberal and comprehensive programme of legal studies offered in many of the American universities, but also by the fact that in most of them the teaching is largely done by men

engaged in active practice, whose professorial work is largely a labour of love. So competent a critic as Mr. Bryce speaks in terms of warm appreciation of the legal side of American university life.

The secretary of the State Board of Law Examiners of New York, Mr. Franklin A. Danaher, in a paper read not long ago at Albany, says: "Members of the Bar of the future to succeed must have a scientific, well-directed and comprehensive training in a law school. The fact that many of the lawyers of to-day did not have that advantage and still succeeded, is no reason why the future will not demand it."

Many of the American law schools especially attempt to make their teaching so general as to attract students from other States in spite of considerable differences in the local laws. And, although the difficulties here are greater, I do not think that we should despair at McGill of making our law school so well considered for its scientific excellence as to attract at least some students who do not intend to practice at the Bar of the Province.

And it is always to be remembered that in training young lawyers, we are at the same time training not a few of the politicians of the future. It is inevitable that the political ranks should be largely recruited from the lawyers. In the British House of Commons, in the American House of Representatives, in the Parliaments of this country, and in the Representative Chambers of the continent of Europe, the lawyers form a very large proportion of the members. And it is certainly not undesirable that men whose business it is to amend the law should have some knowledge of the law as it is and as it has been. I think it is well worth considering whether in our university organization we could not make more special provision for students who may eventually enter political life. If we were able in our Arts curriculum to offer courses in Political Economy, the Principles of Taxation, in Constitutional History, and Constitutional Law, these would form an admirable preparation for any or all of our law students, and could hardly fail to be of special advantage to those among them who are destined to have a share in moulding the legislation of the future.

How often it may be our fortune to entertain unawares the future statesman no one can say. With more reasonable assurance we may hope to be of service to the coming generation of lawyers, and to do something to impress the conviction upon them that law is a science and not a mere business, and that to attain a knowledge of it they must be prepared "to scorn delights and live laborious days."