Quelle

Albert Venn Dicey: Can English Law be Taught at the Universities? (1883)[1]

(1) My purpose in this address is to set forth […] the marked merits, and the no less patent defects, of the present system of legal study, and to show what is the field which this system leaves open for professorial and academical teaching.

(2) The prevailing method of reading in chambers is […] a method of instruction which would strike a foreigner as strange […]. When a student "reading for the bar" enters the chambers of a barrister […] the [barrister] does not in any way undertake to teach. Our student pays a hundred guineas, and the barrister undertakes that his pupil shall see all the work that goes on in chambers, and have an opportunity of trying his own hand at doing it […]. What teaching (if any) he may obtain is a matter of chance […]. Our young man reading for the bar […] [if] he is to learn law, he must pick it up for himself […]. The oddity of the thing is, that he after all gets in due time, mainly by the process of imitation, to make pretty tolerable bricks […].

(3) There are […] things of the highest value which can be learned in court or in chambers, and can be learned nowhere else […]. The mechanism of legal practice, such as the drafting of deeds, the drawing of claims, the arguing of cases, and the like, must be learned in chambers or in court. Experience and practice can do a great deal to bring a man's mind into harmony with judicial opinion. This quality of judiciousness is not a fruit to be fostered by lectures.

(4) The merits, in short, of the present system may be all summed up in the one word "reality". It brings a student in contact with the real actual business […] [of the law].

(5) But to admit […] that from reading in chambers something of great worth, can be gained which no other mode of training can by any possibility replace, is a very different thing from admitting that a hand-to-mouth system of learning under which a young man when reading for the Bar is plunged into details, and left to pick up legal principles haphazard, is a perfect system, or does not exhibit glaring defects which lead to grave evils […].

(6) It is demonstrable that legal education in England has grave defects, and that the circumstances of modem times have rendered these faults of far more importance than they were even as late as fifty years ago.

(7) The inherent defects of [reading in chambers] […] are threefold. The knowledge gained in chambers is fragmentary, unsystematic, [and] is wasteful of time and labour.

(8) Academical instruction at Oxford ought to form the proper preparation for observation of business in London; the proper sphere of professorial activity is to supply all the defects which flow directly or indirectly from a one-sided system of practical training. It is for professors to set forth the law as a coherent whole – to analyse and define legal conceptions – to reduce the mass of legal rules to an orderly series of principles, and to aid, stimulate, and guide the reform or renovation of legal literature […]. At the Universities can be taught what from the nature of things can never be learnt in chambers – the habit of analysing and defining legal conceptions […].

(9) There is indeed no more appropriate or profitable sphere for professorial industry than the explanation, the simplification, and the analysis of legal terminology. It is hardly too much to predict that till the terminology of the law has been reviewed and settled, as it has been in other countries, under the influence of professorial teaching, England will never possess a code at all worthy of the merits of English law.

---

[1] Dicey, Albert Venn, Can English Law be Taught at the Universities? An inaugural lecture delivered at All Souls College, Oxford, 21 April 1883 by Albert Venn Dicey to mark his election as Vinerian Professor of English Law at the University of Oxford, London 1883. The text reproduced here is an edited version of the original work. Paragraph numbers have been added to assist the reader.

(10) At the Universities can be taught, and can hardly, as things stand, be taught elsewhere, the habit of looking upon law as a series of rules and exceptions, and of carefully marking off the exact limits of ascertained principles. The first duty of a competent teacher is to impress upon himself and upon his pupils that law can be digested into a set of rules and exceptions, and to make his hearers feel that general, common, normal principles are far more important than what is exceptional, uncommon, or abnormal.

(11) By adequate study and careful thought whole departments of law can thus be reduced to order and exhibited under the form of a few principles which sum up the effect of a hundred cases, and can thus hundred cases […]. Nothing can be taught to students of greater value either intellectually or for the purpose of legal practice, than the habit of looking upon law as a series of rules; and further that a school of lawyers imbued with this turn of mind would gradually reduce the whole chaotic mass of legal principles to a clear, logical, and symmetrical form. Here, however, we stand on the confines of the last, the most interesting, and perhaps the most important sphere of professorial energy.

(12) At the Universities can be aided, stimulated, and guided as nowhere else the much-needed reform, I had almost said creation, of legal literature.

(13) We have […] not twenty treatises worthy to stand side by side with the productions of great jurists in other countries […]. On academical teachers […] naturally falls the task, as full of importance as it is of interest, of aiding that reform or revival of legal literature which is one of the most remarkable phenomena of the last thirty years. If we look to the needs of our students, it is clearly of primary importance to supply them with works which may enable them to see that law is a rational study, and can be treated like other sciences in a clear, rational, and interesting manner.

(14) By teaching and by literature they can influence far more than is generally believed not the form only but the substance of the law. The rules of law which are supposed to be so inflexible are, for the most part, in fact enactments of judicial legislation, and nothing is more remarkable or more intelligible than the ease with which judicial legislation is swayed by the pressure of authoritative opinion […].

(15) Particular authors have notoriously, even in recent times, modelled, one might almost say brought into existence, whole departments of law.

(16) Exposition (it may be said with truth) is not erudition. But […] the qualities which ought to distinguish academical teaching of law – the habit of looking at our subject as a whole, the desire to define and […] simplify legal ideas […], the effort to reduce law to a series of propositions which are both intelligible and in correspondence with the decisions of the court and the opinions of practising lawyers – these qualities are all fostered by the necessity for clear and effective exposition of actual law […].

(17) The names of Pothier, of Savigny […] are sufficient to remind us that the great works of foreign jurists, the treatises or the codes which have been the result and the embodiment of their teaching, were in many instances the more or less immediate growth of lecture […]. The best Scotch institutional works are the fruit of lectures delivered in the University of Edinburgh [and] Glasgow.

(18) The experience of the United States is full of instruction […]. At the present moment English law is […] admirably taught in the colleges of America. The […] practising counsel of Massachusetts would undoubtedly tell you that the best preparation for practice in court is study in the lecture rooms of Professor Langdell and his colleagues of Harvard University […]. There has never too, we must add, in America, been any encouragement given to the idea that there was an inconsistency between practical knowledge and the theoretical exposition of the law. Kent retired to his professorship from high judicial office […]. Story's lectures were delivered at Harvard, while Story himself was by far the most eminent among the Judges of the Supreme Court at Washington […].

(19) The one book of [English] law which can claim a high and permanent place in the literature of England was originally produced as lectures to the University of Oxford…The preeminent influence exerted by the professorial lectures which make up Blackstone's Commentaries is an al-

most irresistible argument in favour of the conclusion at which we arrive from whatever side we approach our subject.

(20) The immense merits and the patent defects of the present system of teaching; the actual wants of young men studying the law; the faults which have marred the legal literature of England; the movement of reform by which these faults are being day by day corrected or removed; the experience of the whole of continental Europe, of Scotland, of America, and, in the single instance to which it is possible to refer, of England itself – all supply the answer to our original question.

(21) There is no real rivalry between reading in chambers and teaching at the Universities. The law of England can be taught, and if only the teachers are competent, and clearly perceive the limits and aim of their teaching, can be taught as it can nowhere else, at the English Universities.

Dicey, Albert Venn: Can English Law be Taught at the Universities? (1883). In: Themenportal Europäische Geschichte (2013), URL: <http://www.europa.clio-online.de/2013/Article=593>.

Auf diese Quelle bezieht sich ein einführender und erläuternder Essay von Sugarman, David: Making Respected Gentlemen out of Law Professors. A Commentary on Albert Venn Dicey, Can English Law be Taught at the Universities?. In: Themenpor-tal Europäische Geschichte (2013), URL: <http://www.europa.clio-online.de/2013/Article=592>.