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MENTAL HYGIENE AND LAW

CLARA BASSETT¹

The practice of law is intimately concerned with many of our most serious social problems. Some indication of the decisive extent to which our welfare problems are influenced by the legal profession and the legal point of view may be gained from the following data:

NATIONAL CONGRESS

In 1924, of 531 members of Congress, 333 or 60 per cent were lawyers.

In December, 1927, 69 per cent were either lawyers or had studied law.

In the 71st Congress, March 5, 1930, 59 or 61.5 per cent of the 96 Senators were lawyers. The number of lawyers in the Senate was three times as large as the second largest occupational grouping, and almost twelve times the number in the third largest occupational grouping. In the same Congress, 264 or 60.68 per cent of the 435 Representatives were lawyers. The number of lawyers was over three times as large as the next largest occupational grouping and twenty-four times as large as the third largest occupational grouping.

The legal profession is also the dominant occupational group in State Legislatures, as indicated by the following:

State Legislatures.	Year	Senators			Representatives		
		No.	Lawyers	Per Cent	No.	Lawyers	Per Cent
Pennsylvania State Assembly	1929	50	17	34	208	35	16.8
New York State Assembly	1931	51	19	37.2	150	65	43.3
Ohio State General Assembly	1930	32	11	34.3	128	36	28.2
Massachusetts Legislature	1931	40	16	40	240	63	26.2
Illinois Legislature	1931	51	17	33.3	153	54	35.2

The number of senators from the legal profession in the Illinois Legislature in 1931, was 3.4 times as large as the number contained in the next largest occupational grouping; the number of representa-

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tives from the legal profession for the same period was 3.6 times as large as the next largest occupational grouping. These figures are typical of other legislatures and indicate to what extent the deliberations of the legislatures may be dominated by the legal point of view.

A large percentage of the business now handled by governmental assemblies are related to intricate problems of social welfare. More and more governmental responsibility is being taken to safeguard and promote the physical and social welfare of its citizens, and to provide adequate care for the mentally or physically sick or defective, the indigent and the delinquent. As the largest single group with similar training and experience in our legislatures, lawyers have heavy responsibility for the establishment and maintenance of many most important institutions and agencies which intimately affect the lives and fortunes of thousands of persons, young and old. The lives of children in their cradles, of workmen in the midst of their labors, of the sick and helpless, and of the aged tottering to their graves are all affected by the wisdom or lack of wisdom displayed in the enactments of the legislature.

Through control of appropriations and the influencing of appointments and tenure of office, the legislators are responsible for the operation and standards of service in the state's care of its wards. They are responsible for the development and operation of such far-reaching schemes of vital importance as workmen's compensation, widows' pensions, and old age insurance.

The dominating influence of the legal profession in the affairs of county and city is similar to that in the state. The satisfactory development of city or county departments of public welfare, of public school systems, health and sanitation and institutions for the sick, defective, indigent and delinquent, depend on their understanding and support. The simple, comfortable days are long past when any of these human problems can safely be handled without at least a minimum of scientific understanding of their implications.

LAW AND DELINQUENCY

Adult Offenders: Because the disposition of cases of adult offenders is almost entirely in the hands of lawyers and judges, it is essential that in the training of law students some serious attention be paid to preparing them for these heavy responsibilities. In handling problems of delinquency, the lawyer or judge should certainly bring to his work something more than mental agility, a knowledge of legal enactments, precedents and tricks for securing postponements or

evidence and facility in legal manoeuvring. The problems he is called upon to handle are essentially and primarily problems of human personality and not of legal abstractions.

Many of the people who come before him are feeble-minded or of borderline intelligence, some are epileptic or insane, others are psychopathic and many are physically diseased. A very large per cent of cases are those of young adolescents, and whether or not these individuals are guided into constructive or destructive paths depends largely on the scientific understanding of their problems displayed by the judges and lawyers. Any humane and constructive handling of these cases requires that the judge or lawyer have at least a minimum understanding of some of the physical, psychological, psychiatric and social implications in the case. The atmosphere and methods of correctional institutions are largely controlled by the legalistic, impersonal concepts of trial and punishment which dominate the courts. Any further development of a more constructive, individualized handling of offenders will largely depend upon the extent to which lawyers and law schools inject a more humanized, personalized and scientific understanding of the offender into the cold, intricate, and theoretical abstractions of the legal structure.

Juvenile Court: A more humanized and flexible approach to the handling of offenders has at least penetrated to some extent the procedures of the juvenile courts. Nowhere is the need for a scientific understanding of personality more conspicuous than in the juvenile court, where conscientious judges are faced with tragic and comic problems requiring almost superhuman insight and wisdom. The methods of the juvenile court are radically influenced by the judge. If he brings to his work only the rigid thinking and inflexible punitive methods long exercised in the atmosphere of the criminal court, if his appointment is considered a political sinecure, if he is transferred at yearly intervals, there is no hope of the juvenile court's doing modern, constructive work in the adjustment of problem children. The law school certainly has a grave responsibility which is almost universally unrecognized and neglected, for preparing its students to understand the human material with which they will deal.

The United States Children's Bureau and the National Probation Association have formulated the following standards for the choice of juvenile court judges: "The judge should be chosen because of his special qualifications for juvenile court work. He should have legal training, acquaintance with social problems, and understanding of child psychology. The tenure of office should be suffi-

ciently long to warrant special preparatory studies and the development of special interest in juvenile work, preferably not less than six years." Unless some basis is laid during the years of his law school work, it is questionable whether there will ever be a sufficient number of judges with the above qualifications. Without at least some preliminary training and insight into the contributions which the various professional and scientific fields may make to his work, he will be devoid of sound ideas as to the possibilities of scientific study and treatment of delinquents, and the standards of organization and professional training necessary for this work.

Domestic Relations: Many tragedies related to marriage and divorce and parent-child relationships might be handled far more wisely were lawyers equipped with some mental hygiene knowledge which would aid them immensely in what otherwise seem baffling situations. In these proceedings, the lawyer is often the only intimate adviser sought, and he thus has a unique opportunity to do much socially constructive work. For instance, the arbitrary legal dispositions often now made of children of divorced parents practically insure the serious maladjustment of these children as they grow up. With a better understanding of the needs of childhood, the lawyer might gain the cooperation of the parents in a plan which would not make the children the wretched pawns in the situation.

Guardianship: Lawyers are sometimes called upon to act in the place of parents in the long-time supervision of young people and in these legal duties, too, a knowledge of mental hygiene would prove helpful.

Evidence: A psychiatric insight into the workings of personality with its powerful and subterranean motives, its intense desires and possible derangements, would be of great assistance to lawyers in all their work. Problems relating to false accusation, paranoid trends, sudden character changes, obsessional behavior are frequently met by the lawyer, and his legal training offers him little assistance in understanding them. Some training in social case work techniques such as interviewing, the obtaining of an adequate social history, the knowledge and utilization of social resources in the community would all be of great assistance to the lawyer in both his public and private practice.

If some knowledge on the part of lawyers of the physical, psychological, psychiatric and social aspects of personality seems so essential to any modern handling of the many human problems in which they are so constantly involved, what attention, if any, is being

given to this type of training in the law schools of the country? Do these law schools recognize the need for such training? Do they require any specific courses in these subjects to be taken by the student in his pre-legal years? Is any attempt being made to inject such material into the training given students in the law schools? An analysis of some of the courses offered in various schools may indicate to what extent the law schools are cognizant of these needs and of the wider social implications of the legal profession.

In making this study, the catalogues of the law schools have been analyzed, and the descriptive statements covering content of courses have been taken at face value. It is quite possible that such an approach does not do full justice to the law schools, as it is conceivable that an instructor might inject into his course much material taken from the social sciences, and still describe it for catalogue purposes in stilted, legalistic phrases. However, it seems more probable that were such a socialized approach being emphasized, some reflection of this point of view would creep into the catalogue statement. It is equally possible for another course, attractively described in terms which emphasize a socialized approach, to be actually quite worthless. However, anyone who has attempted to investigate thoroughly the exact content of any course given in an educational institution, will realize the enormous difficulties involved in the discriminating evaluation of the spirit and content of the course even after the most detailed study.

The following table indicates the number of professors, the number of courses, and the number of students in the group of law schools studied:

ANALYSIS OF SCHOOLS OF LAW (1930-1931)

Years Liberal Arts Required for Entrance	Length of Law Course	Number of Professors	Number of Courses Offered in Law School	Number of Students in Law School
2 years	3 years	11	33	148
2 years	3 years	12	25	83
3 years	3 years	8	28	123
3 years	3 years	11	36	228
4 years	3 years	20	46	202
2 years	3 years	9	28	151
3 years	3 years	19	60	585
3 years	3 years	11	40	not giver.
4 years	3 years	16	29	319
3 years	3 years	38	46	569
4 years	3 years	35	43	339
4 years	3 years	34	53	1600

The following more or less typical list of courses indicates the type of courses included in the average three-year course of legal training:

Contracts	Public Utilities	Future Interests
Torts	Sales	Corporations
Common Law Pleading	Partnership	Constitutional Law
Personal Property	Equity Practice	Orphans Court
Real Property I, II	Agency	Conveyancing Law
Criminal Law	Damages	Evidence
Equity I, II	Suretyship	Conflict of Laws
Bills and Notes	Persons and Domestic	Statutes
Common Pleas Practice	Relations	Criminal Procedure
		Legal Ethics

The two courses given in law schools where one might reasonably expect to find a more humanized approach to law are those on *Criminal Law* and *Domestic Relations*. However, in almost every law school, these courses are handled in the traditional, categorical, legalistic manner, as indicated by the following typical descriptions:

"Criminal Law: The criminal act; criminal attempts; consent; criminal intent; circumstances affecting intent; justification; parties in crime; agency; joint principals; accessories; crimes against the person, especially murder and manslaughter; larceny and kindred offenses." Mikell, "Cases on Criminal Law."

Domestic Relations: Parent and child; custody; support; earnings and services; parental rights against third parties; parental liability for torts of or to children. Infants: contracts and conveyances; necessities, affirmance, disaffirmance, restoration of benefits, particular obligations; torts; crimes. Husband and wife: incidents of marital relation as between spouses and against third parties; husband's liability for torts and contracts of wife; incapacities of wife; statutory changes in common law. Marriage, Divorce and Separation." Madden, "Cases on Domestic Relations."

Medical schools have found it advisable to specify certain courses which they require the student to take during their undergraduate period. Law schools, apparently feel very little specific concern with the student's pre-legal training, but are quite satisfied by the formal acquisition of a certain specified sum of "credits." The following analysis will indicate to what extent the law schools concern themselves with this important period of pre-legal training:

Pre-Legal Training Requirements as Formulated by Law Schools:

1. Four-year course in an approved college or university. No pre-legal courses required nor any suggestions made.

2. Work equivalent to three-fourths of that acceptable for a Bachelor's degree. No pre-legal courses required, nor any suggestions made.

3. Three years of undergraduate study in an approved college or scientific school, which course of study must have included satisfactory courses in economics and English and American history.

4. Graduates of approved colleges. No pre-legal courses required, nor any suggestions made.

5. Three years of college work. "It is very desirable that the preliminary education of law students should include work in the social sciences and students expecting to study law are strongly advised to devote at least a year of their college work to these subjects. . . . During his first two years of pre-legal college work the prospective law student should distribute his work adequately among the humanities, the social sciences, and the natural sciences in order that he may attain a respectable breadth of general education and culture. Various studies are, however, especially valuable in the preliminary education of a lawyer. These courses have been designated as "pre-legal" courses and are enumerated below. Though not required, prospective law students are advised to elect at least a year of work (preferably in the third college year) from this group. A choice among the courses offered in the University upon the following subjects is particularly recommended:

"Principles of Economics and Political Science; Constitutional and Political History of the United States; National, Federal, State, and Municipal Government; Constitutional and Political History of England; Oral Debates and Argumentation; Bookkeeping and Accounting; Marketing and Transportation; Economic and Social History; Finance, Money, and Banking; Financial and Tariff History; Labor and Industry; Organization and Control of Business; Introduction to Study of Society; Social Origins and Control; Risk-Bearing; Charities and Social Treatment of Crime; Social Forces in Modern Democracy; Logic and Psychology; Political and Social Ethics and Philosophy."

6. Three years of college work. "The faculty of the Law College does not require that applicants for admission shall have pursued any specific course of study, or completed any prescribed subjects. The intending law student is strongly urged, however, to lay special emphasis on studies in English; in History, particularly the History of English and American government and institutions; and Economics and Political Science."

7. Two years of college work. No prescribed pre-legal courses required, nor suggestions made.

8. Two years of college credit. No prescribed pre-legal courses required, nor any suggestions made.

9. Three years of college credit. No prescribed pre-legal courses required, nor any suggestions made.

10. Two years of college work. "A thorough training in English expression, mathematics and logic is desirable. In addition, the student who contemplates the study of law should be informed upon the following subjects: English and American Constitutional History, American Government, Theories of Government and Politics, and Current Social and Economic Theories. Knowledge of modern business methods will also be helpful."

11. B. A. degree. "The faculty of the School has not prescribed a pre-legal curriculum of studies for the bachelor of arts degree required for admission to the School and is not now prepared to do so. The law, both as a subject of study and in its application, touches life at so many points that it would be difficult absolutely to prescribe those courses in college which may best contribute to the law student's needs. . . . A training of the analytical faculties is, therefore, highly desirable, and such subjects as logic, mathematics, physics, and chemistry may well form a part of his preparation. The study of languages, particularly the classical languages, and of literature, including composition and public speaking, is especially important. The student should so shape his course in college that in addition to his scientific and literary studies, he may have opportunity to attend courses in history, economics, politics and philosophy. A knowledge of accounting and of business processes is useful to the lawyer; and the study of psychology offers fruitful possibilities in the application of scientific methods to human conduct."

12. B. A. degree. No prescribed pre-legal courses required, nor any suggestions made.

None of the schools analyzed have developed definite pre-legal course requirements other than the requirements already set up by the Liberal Arts Colleges. In those law schools which make suggestions for pre-legal courses, these suggestions are extremely varied and concern themselves largely with history, economics, business and government. One school includes, among many others, several course suggestions such as *Economic and Social History*, *Introduction to Study of Society*, *Social Origins and Control*, *Charities and Social Treatment of Crime*, *Social Forces in Modern Democracy*, *Logic and*

Psychology, which might or might not, if the student actually took them, contribute to a more specific understanding of human personality. With the possible exception of *Charities and Social Treatment of Crime*, the courses suggested would probably be far too generalized, theoretical and abstract to give the student the kind of concrete understanding of the possibilities of human personality which would aid him in handling the people he encounters in his work.

In school No. 11 is the only sentence contained in any of the catalogues in their consideration of pre-legal courses, which indicates an insight into the contribution which courses in psychiatry, psychology, and physical health problems would make to the preparation of the lawyer, but even this one oasis was apparently tacked on as an afterthought to history, economics and business: "and the study of psychology offers fruitful possibilities in the application of scientific methods to human conduct."

If the prospective law student were well oriented enough in the implications of his future profession, which is decidedly questionable, to realize the importance, in any modern, scientific approach to the individual and social problems with which he will constantly be faced, of a knowledge of the physiological equipment of the human being, the effects of diseases, defects and variations in intellectual equipment, of the emotional and instinctive development of personality from infancy through maturity and its deviations, and of community organization and social problems, he *might* make a judicious selection of courses given in the departments of sociology, biology and psychology which would fill in certain sections of these needs, but with such a wide selection of electives offered in many specialized departments, and with so little guidance in the social implications of his profession, it is hardly possible to hope that he will gain more than a few scattered and uncorrelated segments of this knowledge.

If the possibilities of the law student's obtaining any adequate understanding of the human aspects of his profession during his collegiate course are not insured, he will fail to find this material in his law course, as is indicated by the following analysis of the courses offered in the schools of law:

Courses Offered in the Schools of Law:

1. All courses strictly legal in content, and taught by lawyers.
2. All courses strictly legal in content, and taught by lawyers.

3. All courses offered strictly legal in content. Some slight evidence of a broader approach in the following courses:

"Criminal Law: The purpose of this course is to give the student some insight into and some understanding of crime as a social problem and against this background to study certain aspects of the criminal law and its administration as a device for controlling criminal behavior."

"Family Law: This course will deal with certain important problems in family law. The problems will be considered in the light of the available evidence from the other social sciences."

The faculty of the Law School includes outside lecturers in Marketing, Insurance, Economics, Social Legislation, Philosophy, Government and Accounting. "In addition to the courses in public law, jurisprudence, and Roman law, offered as a part of the regular work of the School of Law, the Faculty of Law specially recommends to its students the courses offered by the Faculty of Political Science in political and constitutional history, diplomacy, economics, finance, and sociology, as affording an invaluable training for the public service."

4. All courses, with the two following exceptions, strictly legal in content and with one additional exception, taught by lawyers:

"Methods of Social and Legal Research: A review and critical evaluation of methods and techniques in social science investigations, with special emphasis upon the uses and limitations of the statistical method." Elective.

"Legal and Psychiatric Aspects of Crime: A study of the manner in which a formal and inelastic criminal procedure affects abnormal individual delinquents, and of the role of psychiatry and allied techniques in the disposition of such cases. Lectures illustrated by clinical demonstrations will be held twice a week. Open only to specially qualified students."

5. All courses, with one exception, are strictly legal in content and taught by lawyers. Faculty assisted by lecturers in Political Science, Philosophy, Economics and Accounting.

"Legal Sociology: The analysis of statistics relating to legal procedure. An attempt will be made to indicate the relationship between the trends of appellate decisions and of trial courts practice particularly in the field of family relations. The application of the social, as distinguished from the legal case method, will be developed." Elective for third year law students.

6. All courses strictly legal in content and taught by lawyers.

7. All courses strictly legal in content and taught by lawyers.

8. All courses strictly legal in content and taught by lawyers.

9. All courses strictly legal in content and taught by lawyers.
10. All courses strictly legal in content and taught by lawyers.
11. All courses, with two exceptions, strictly legal in content and all courses taught by lawyers.

"The Law and Problems of Poverty: (a) Sources of state law; courts of the state; fundamentals of law governing domestic relationships; children in industry; dependent, defective and delinquent children. (b) Fundamentals of law governing relationships of landlord and tenant; employer and employee. Public institutions for relief of indigents; miscellaneous laws of importance in social work." Open to students of all colleges and elective.

"Criminology: A research course for the study of modern criminal science." Elective course for graduates of the Law School.

This School provides an opportunity for a limited number of students to work with the County Legal Aid Society and states that "A valuable experience in practice and in the field of social work may be obtained through this means."

12. All courses except one graduate course strictly legal in content and taught by lawyers. The description of the course is as follows:

"Criminology in Relation to Criminal Law and Procedure"—a research and discussion course open to graduates.

The above analysis indicates that no provision whatever is made in the law schools for giving all law students some required preparation for a more socialized administration of law. So far as their catalogues indicate, all courses in the required curriculum are concerned solely with the traditional legalistic operation of the law entirely apart from wider human and social considerations of the function of the lawyer in modern society.

In only one school is there any indication that any of the psychological, or social sciences have a contribution to make in the administration of justice. (See school No. 3.) This school also refers the student to courses offered by other departments which are considered to have some relation and value in legal training.

In schools No. 4, No. 5, and No. 11, one or two courses are offered in the school which indicate a more socialized approach to legal problems, but these are all elective courses taken only by the students especially interested, and the one course which seems to offer material essential to the training of *all* lawyers: "*Legal and Psychiatric Aspects of Crime,*" is limited to a small group of "specially qualified students." The possibility of a field work experience which

will help the student in understanding the social implications of law, is offered by only one school to a few students who may elect a period of experience with the County Legal Aid Society.

If it had been hoped that modern law schools were including as a required part of the training of all lawyers, in either pre-legal or legal courses, a fund of information and experience which would equip them to take leadership in the evolution of a more socialized, humane and scientific handling of delinquency in either juvenile or adult courts, of domestic relations problems, of governmental and legislative activities relating to social problems, this hope is doomed to disappointment at the present time. In spite of the loud and widespread volume of dissatisfaction and criticism of our legal machinery and of the rigid, traditional legalistic handling of social problems relating to the administration of law, we find that law schools are still comfortably impervious to these accusations and are still busy grinding out thousands of lawyers unprepared to meet these pressing social needs.

Possibilities for Further Experimentation in the Preparation of the Law Student:

1. Include in the pre-legal period of training certain *required* courses which will orient the law student in the wider social implications of the legal profession. Such courses as the following would have much to offer the lawyer in the practice of his profession:

- Personal and Community Health and Hygiene.
- Personality Development and Mental Hygiene.
- Social Psychology.
- Abnormal Psychology.
- Child Psychology.
- Nature and Variations of Intelligence.
- Community Organization.
- Social Institutions and Agencies.
- Social Aspects of Crime and Delinquency.
- The Family.
- Society and the Child.
- Social Case Work.
- Social and Welfare Problems and Legislation.
- Juvenile Delinquency and the Emotional and Social Readjustment of Personality.

Ideally, the courses chosen as required studies, would be organized with the future lawyers' needs especially in mind; they would be concrete and practical, and would attempt to acquaint him thoroughly

with the findings and methods of other social sciences which have important contributions to make to the solution of legal problems.

2. The inclusion in the law school curriculum of a full-sized, two semester, well-rounded required course in *Psychiatry as Related to Law*, to be given by a psychiatrist who is not only familiar with conditions of mental disease and defect, but experienced in child guidance and in the preventive and social aspects of psychiatry.

3. Arrangements for the *attendance of the law students at the staff conferences*, preferably of a child guidance clinic, or other psychiatric clinic if this is not available, during one semester of their work.

4. Arrangements for *summer field work experiences* for prospective law students, either during their pre-legal years or during their law school course, in connection with community health and welfare agencies which are trying to meet social problems in a modern scientific manner. Such experiences might be gained in child guidance clinics, in juvenile protective agencies which are doing careful case work treatment, in juvenile courts, in some of the more progressive industrial schools or institutions for delinquent children, or in some of the reformatories or prisons which are leaders in the application of modern methods to the care and treatment of delinquents. Two such summer field work experiences would be invaluable to the lawyer in his future career, whether such career concentrated either on public or private practice.

5. Development of a *carefully selected required series of lectures* of at least two hours in length throughout one semester, to be given by outstanding people in their respective fields. The subjects covered might include such subjects as the following:

The major physical defects and diseases, their symptoms and treatment.

The chief public health problems facing the community; agencies engaged in combating them and solutions recommended.

Child health activities and agencies.

Mental diseases, chief causes, and main methods of treatment.

Mental defects and the social control of the subnormal.

Psychological, educational and vocational testing and guidance.

Community conditions as related to the causation of serious social problems.

Juvenile protective agencies, their methods of study and treatment of individual children.

Child guidance and its relation to the prevention of mental disease and delinquency.

The family and its relation to personality development.

Child psychology, or the evolution of personality from infancy to maturity.

The public school system, its organization and methods.

The visiting teacher and other methods of individual adjustment in the school system.

Recreation as a community health measure.

Conditions of work and industry as they affect personality.

Community organization, development, agencies and resources for handling problems.

There is no doubt that the effort to inject such socialized material into legal education will meet with great difficulties. In all probability the relativity, the disappearance of set sign posts and clear-cut categories and the emphasis upon understanding the needs of the individual, which characterize the social approach, will be peculiarly abhorrent to the legal mind so frequently focussed on the "letter" of the law. The number of persons adequately trained and experienced in the understanding and handling of social problems, who are at the same time excellent teachers, is necessarily limited at this time. However, the law school's tendency to require that these instructors also be trained and experienced lawyers seems unnecessary. The goal would seem to be to give the law students some material which will aid them in developing a better understanding of human beings and of social relationships regardless of the legal implications of such an approach. "Legalized" sociology or psychiatry would be worse than useless for this purpose.

It is fantastic to find that the huge, intricate superstructure of the law should receive exclusive attention in training, when the only importance of the law is in relation to individuals or groups of human beings. It would seem indubitably clear that at least an equal consideration should be given in the training of lawyers to the scientific understanding of the human material to which the law is applied. Analysis of the catalogues describing training given to ministers, doctors, nurses, teachers and social workers will show that far more progress has already been made in meeting this need in the training of these professional groups than in the training offered by law schools.